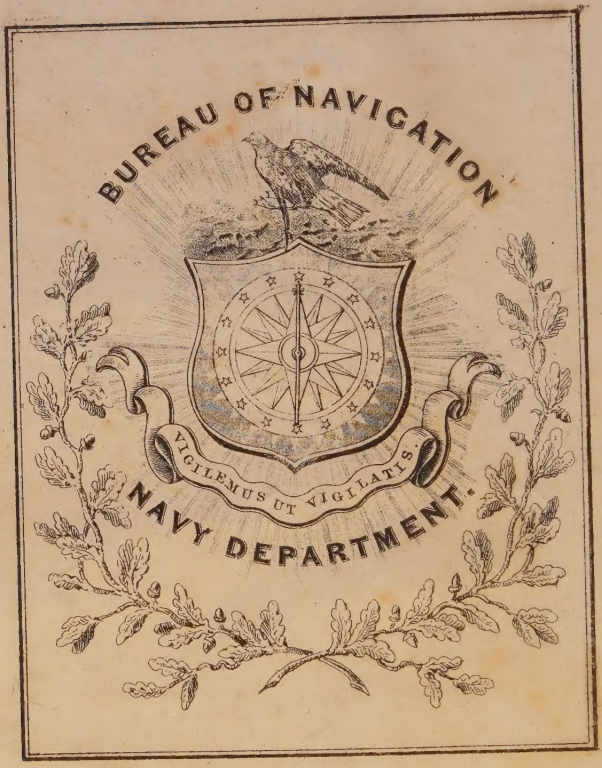
BUREAU OF NAVIGATION
VIGILEMUS UT VIGILATIS.
NAVY DEPARTMENT.

Henry Glass.

A TREATISE ON CITIZENSHIP.

"Every human being who has rights and duties is citizen or foreigner."

AUSTIN: *Jurisprudence.*

"Every country that is liberal of naturalization is fit for empire."

BACON: *Essay on the True Greatness of States.*

"Naturalization is an important appendage of the sovereignty and independence of every nation." — *Anon.*

BUREAU OF NAVIGATION
NAVY DEPARTMENT

A

TREATISE ON CITIZENSHIP,

BY BIRTH AND BY NATURALIZATION,

WITH REFERENCE TO THE

LAW OF NATIONS, ROMAN CIVIL LAW,

LAW OF THE UNITED STATES OF AMERICA,

AND THE

LAW OF FRANCE;

INCLUDING PROVISIONS IN THE FEDERAL CONSTITUTION, AND IN THE SEVERAL STATE CONSTITUTIONS, IN RESPECT OF CITIZENSHIP; TOGETHER WITH DECISIONS THEREON OF THE FEDERAL AND STATE COURTS.

BY

ALEXANDER PORTER MORSE,

OF WASHINGTON, D.C.

BOSTON:
LITTLE, BROWN, AND COMPANY.
1881.

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University Press:
John Wilson and Son, Cambridge.

TO

THE RIGHT HONORABLE

SIR ROBERT PHILLIMORE, D.C.L.,

WHOSE ACCOMPLISHMENTS AS JURIST AND SCHOLAR HAVE LONG BEEN RECOGNIZED,
AND WHOSE MORE RECENT LABORS IN THE FIELD OF

International Jurisprudence

HAVE ADVOCATED THE POLICY AND ILLUSTRATED THE WISDOM OF THE
SYSTEM THAT TEACHES THAT "THERE SHOULD BE A HARMONY
AND NOT A CONFLICT OF LAWS,"

This Work is Respectfully Dedicated.

WASHINGTON, D.C., June, 1880.

PREFACE.

It has been observed in substance, by an author who made some impression on his age, that upon all great subjects much always remains to be said. If this observation be founded in truth, — as the writer believes it to be, — and it be conceded that the subject herein treated is within the description mentioned, it would appear to be unnecessary to make apology for offering the reader a contribution to the law and literature of citizenship. That citizenship is a great question, in the most liberal meaning of the expression, will not, it is presumed, be denied. It is also a many-sided question. The term involves the idea of rights and duties, of sacred obligations and cherished prerogatives. Its present consideration has reference to the relations between individuals, as well as to the responsibilities of a state towards its own citizens and towards the citizens of other states. It will appear in the progress of this discussion why the terms "citizen" and "citizenship" have been employed in preference to other expressions which designate national character and nationality. The plan and general scope of the work will be readily understood on reference to the full title. The division of the subject adopted seemed natural; and the comparative and historical method of investigation, which has been pursued, is at once convenient and instructive. It signifies very little, for example, to say that naturalized citizens are entitled to, and should receive, the same protection to persons and property that is accorded to native citizens in like sit-

uations and circumstances, until we learn who are native citizens, and what their customary rights are. It has been the object and the effort of the writer to quote the best expressions on the subject of authoritative writers, and to group conveniently the decisions in leading cases as determined by courts and commissions. It is believed that this work will possess an interest for every intelligent citizen; and it may not, perhaps, be too much to expect that it will be found of value to the statesman, the lawyer, and the scholar. Duties as well as rights attach to the character of citizen; and it would be of advantage alike to the individual and to the state if this fact were more generally kept in mind.

Evidences are not wanting to prove that great interest is felt at home and abroad in the subject herein discussed. Among others may be mentioned the frequent consideration of citizenship in contemporaneous publications; discussions by authors and jurists in Europe and America at international conferences of the representative minds of all nations; diplomatic correspondence, and the multiplication of treaties between states defining more clearly the rights of citizens, and regulating the intercourse between the citizens of different states. The reports of proceedings of at least two international associations, organized to bring about the reform and advancement of the Law of Nations, show how much progress has already been made in the direction of disseminating sound views and wholesome information on topics of immediate concern. And the recent labors of an American jurist constitute strong evidence of the feasibility of a systematic and philosophic code of laws for the government and observance of all nations.[1]

In the United States, citizenship is a burning question. It has been the origin of, or an important factor in, some of the gravest controversies carried on with foreign states; and the dual citizenship, — citizenship of the states and citizenship of the United States, — which exists under our form of government, has proven a fruitful source of domestic agitation. In referring to this dual citizenship, allusion has herein been made

[1] Field, International Code.

to some considerations, the elaboration of which was scarcely within the scope of the present work. In the United States citizenship alone does not — as seems to be too generally believed — entitle to suffrage. But citizenship is intimately connected with suffrage; and the exercise of the elective franchise may be considered, *primâ facie*, evidence of citizenship; usually it does not exist without it. The late President of the United States, whose tragic death has just now shocked the whole community and aroused deep sympathy throughout the civilized world, earnestly invited the attention of Congress and the people to the prevalence of ignorance and illiteracy among voters under the present suffrage system.[1] Various schemes have been from time to time proposed with a view to abolish or to mitigate the most alarming features that are incident to our existing system. These evils have already become well-nigh intolerable; and their existence is a constant threat to the peace and prosperity of the country.

Although the doctrine of the right of expatriation was bitterly assailed in other times and by certain states, it has been formally abandoned; and the right of an individual, "who owes no debt, and is not guilty of any crime," to leave the place of his birth, and to adopt another citizenship or national character, is now conceded by all civilized states. The exercise of this right is described by Continental writers as *le droit d'option*. This liberty, which is now accorded to every free man of age to make choice of a country for himself, has been referred to as a characteristic of the civilization of modern times; and it has been pointed out that "the argument against double nationality, and in support of the modern doctrine of allegiance, is based on the theory of natural freedom." There is, happily, then, no longer any question either as to the right of expatriation, or as to the effects of naturalization, when the fact of naturalization has been once conceded. On these points the nations are in substantial accord. The difficulty always is to ascertain what should constitute the conclusive evidence of a change of national

[1] Garfield, Inaugural Address, 4th March, 1881.

character; and a majority of the controversies between states have turned upon this issue.

"In modern days, in civilized days, men's choice determines nearly all they do. But in early times that choice determined scarcely anything. The guiding rule was the law of *status*. Everybody was born to a place in the community: in that place he had to stay; in that place he found certain duties which he had to fulfil, and which were all he needed to think of. The net of custom caught men in distinct spots, and kept each where he stood." [1]

"The natural right of every free person, who owes no debt and is not guilty of any crime, to leave the country of his birth, in good faith and for an honest purpose, — the privilege of throwing off his natural allegiance and of substituting another allegiance in its place, — is incontestible." [2]

While conceding the great services rendered to mankind by other peoples, in the declaration and propagation of these principles of free will and free action for the individual man, it may be claimed, without reproach of national boasting, that the action and efforts of statesmen of the United States of America have contributed largely to bring about this most desirable result.

Citizenship is a term now generally employed to describe the political relationship which exists between an individual and the sovereign state to which he owes allegiance. It is either natural or acquired. "According to the municipal system of most countries," says Ashton,[3] "there are two general criteria of nationality by birth, or of natural citizenship. They are *the place of birth* and *the nationality of the parents.* Under the laws of some countries both are invoked to determine who are to be regarded as natural members of the body politic. . . . Every state, in addition to the sovereign power of determining the conditions upon which *natural* citizenship shall supervene, exercises the right of conferring citizenship

[1] Bagehot, Physics and Politics.

[2] Black, Opinions of Attorneys-General, U. S., Vol. VIII. p. 139.

[3] *Arg.* in De Leon *v.* Mexico, before United States and Mexican Commission, Washington, D. C.

upon those to whom it does not *naturally* belong; in other words, the right of naturalizing foreigners or aliens."

National character as incident to birth in a particular locality was the creature of feudal times and of military vassalage, and was described as the *jus soli;* national character as the result of parentage was the rule adopted by freer peoples and more enlightened communities, and was designated *jus sanguinis.*[1]

The whole body of the inhabitants of a country enjoying the protection of its laws, including the young who are still under the legal age, and the very old, who have passed the time of action, and all others under any species of disability, are, in a certain wide and general sense, citizens; but the full and complete definition of a citizen is confined to those who participate in the governing power, either by themselves or their representatives. The rights, duties, obligations, and privileges of each class of the inhabitants are different in different states, and depend on the laws and constitution of each.[2]

A citizen, in the largest sense, is any native or naturalized person who is entitled to full protection in the exercise and enjoyment of the so-called private rights.[3] The natural-born or native is one who is born in the country, of citizen parents.[4]

"Of all the elements which compose a man's *status*, viewed as a subject of law, nationality is the first and most important. By a man's nationality is meant that political relationship which exists between him and the sovereign state to which he owes allegiance; and this relationship is fixed in different countries by varying rules and principles." [5]

The origin of the right which one nation has to adopt as its own claim, and to demand indemnity from another nation for

[1] Stoicesco, Étude sur la Naturalisation, Paris, 1876, p. 286.

[2] Aristotle, Politics, Book III., C. S. 2 and 3; Political Pamphlets, Expatriation and Allegiance, Congressional Library, Washington, D. C.

[3] Walsh *v.* Lallande, 25 Louisiana Annual, p. 189.

[4] Vattel, Droit des Gens, 1, i. c. xix. sect. 212. Ed. Paris, 1863.

[5] Foote, Private International Jurisprudence, p. 1.

the injury done to an individual, is that the individual, being a member of the body politic and a representative *pro tanto* of his nation, the latter receives an injury whenever the person or property of such individual suffers wrong or injustice.

"The rights of a state partly respect the collective capacity of the state, its government or representatives, and partly the *individuals* of which it is composed; and therefore *a state may be injured* in two ways: either directly, by a violation of the rights affecting its collective capacity; or indirectly, by a violation of the rights of the individual, to whom it owes protection in return for his allegiance."[1]

"A state," according to Grotius, "is a complete or self-sufficient body of free persons, united together for the common benefit to enjoy peaceably their own rights, and to do right to foreigners." This expression of the *raison d'être* of a state is as wise as it is terse; it contains all the elements of which political wisdom and morality are composed. It should be graven upon the seal of every state, and it deserves to be borne in constant mind by all statesmen.

In the current number of a monthly review[2] attention is called to certain anomalies in the naturalization laws of the United States. Some positions of the writer of the article are well taken. It is matter for criticism, as has been suggested in the text, that the laws should fail to prescribe the form of proof of so solemn and important a transaction as the naturalization of an alien. Public record should be made of all acts of naturalization; and copies should be preserved in the archives of the Department of State of the United States, of easy access for reference by home and foreign governments. The intimation that the naturalization of aliens by state courts is irregular or questionable is not so well founded as it seems to be at first impression. In naturalizing aliens, the state courts act, *quoad hoc*, as courts of the United States. It is as a matter of accommodation and convenience that the machinery and instrumentality of state courts are employed

[1] Phillimore, Int. Law, 10.

[2] The International Review, "Naturalization," September, 1881.

in preserving the evidences of naturalization proceedings; and there is no reason to believe that the administration of the law by federal courts would be any more rigid or regular. The failure of existing law to make provision for the public registration of every act of naturalization before some authority of the United States is, however, a serious omission. It is the law itself, as well as the administration of the law, which needs amendment. The objection to a recent act of Congress[1] is that it falls short of the purpose intended. It provides a penalty for fraudulent practices in naturalization proceedings, but it fails to make provision for the vacation and forfeiture of certificates of naturalization fraudulently obtained. Proof of the national character is frequently required; and it is the interest of all concerned that the record of all cases, where national character is the result of judicial action or legislative enactment, should be as simple and, of course, as public as possible. Every one will admit "the importance to every individual of being able to prove his nationality. Rights the dearest to man may depend upon it. The capacity of inheritance and transmittal of property, the legality of marriage, the status of children, the right to vote, and eligibility to office may be determined by it."[2]

The causes and conditions in several foreign States, which, in great measure, account for the recent heavy immigration to the United States, are still existent: while the inducements which influence and attract population are practically undiminished, if not exhaustless. There are no present indications, at least, that either of the operating motives above referred to, which usually induce large masses of human beings to abandon old habitations in search of homes, will change or disappear in the near future. It may, therefore, be confidently expected that the additions to our population will be proportionately augmented during coming years. In view of the fact that these people seek the United States for the purpose of establishing themselves and of acquiring American citizenship, it would seem to be the office of wise

[1] July 14, 1870.

[2] International Review, "Naturalization," September, 1881.

statesmanship to facilitate their admission and to provide for their incorporation into the body politic as speedily as may be prudent. At the same time, it is important that the laws in respect to naturalization should be made precise and uniform, and that the administration of the law should be surrounded with all practicable safeguards against fraud and corruption.

There are closely related questions of some gravity which are pressing. The negro question — so far, at least, as political status is concerned — has been finally disposed of. But the Indian problem and the Chinese question remain. Shall the American Indian "not in tribal relations" be clothed with civil rights and political privileges? Shall we ostracize or naturalize the Chinaman? Shall suffrage be extended to women?

A small portion of the matter which occurs in that part of the following pages where naturalization is discussed has already been published in The American Law Register for October and November, 1879; the original has, however, been submitted to revision and correction, and is incorporated herein by the courtesy of the publishers.

Several leading cases, together with many expressions of judicial opinion on the questions now discussed, are published herein for the first time in the English version.

Important and controlling decisions on "Eligibility and Title to Office in the United States and in the several States of the Union;" the provisions of the Civil Code of France, in reference to the "Enjoyment and Loss of Civil Rights," and the reply of M. Treitt, legal adviser at Paris to the British Embassy, to the question; "What constitute the disabilities to which resident aliens in France are subject according to the law of that country?" will be found in the Appendix.

As this book is going through the press, an instructive and interesting decision[1] has been rendered by the Supreme

[1] The Baltimore & Ohio Railroad Company *v.* Munroe Tunkhouser, Administrator, etc., U. S. Sup. Ct. No. 788, Oct. Term. 1881.

Court of the United States, on the question of the citizenship of corporations, in relation to their right to sue and liability to suit within the field of their corporate operations, but beyond the jurisdiction of their original charter or creation.

The thanks of the writer are tendered to Mr. ROBERT DESTY of San Francisco, and to Mr. E. E. TREFFRY of Cambridge, Mass., for valuable and material aid.

A. P. M.

WASHINGTON, D. C., November, 1881.

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A TREATISE ON CITIZENSHIP.

PART I.

§ 1. The authors of the Pandects treated of the individual with reference to several different relations.[1]

It is particularly in his relation to the state that I propose to consider the individual in this discussion. But this consideration, in its progress, will make necessary some reference to the relations of states to states. The first and controlling principle in respect to the latter is the natural and indestructible equality of states. A recognition of this principle is universal in the polity of modern states; and, in one sphere of intellectual exertion, it finds expression in the axiom, "On the field of diplomacy Switzerland and Russia meet as equals."

A philosophic author calls it "the supreme principle of modern international law."[2]

"The polity of the ancients was founded upon the inequality of nations. Up to this date modern polity has been a combination of ancient maxims and principles of Christianity."[3]

§ 2. There are certain constituent elements and properties which are involved in the idea of a state; and these are

[1] "Jurists," says Phillimore, "considered man in a threefold view, — as an *animal*, i. e. a sensitive creature; as a *being* endowed with reason (*particeps rationis*); and as a *member* of a particular *society*. Hence the divisions of law to which he was subject, — 1. Jus naturale; 2. Jus gentium; 3. Jus civile." — *Private Law among the Romans.*

[2] Lerminier, Philosophie du Droit, Vol. I. ch. 2.

[3] *Ib.*

held to be essential to its constitution and existence. These are *people*, *territory*, *law*, *government*, *order*, *sovereignty*, *independence*, *autonomy*, and *stability*.

Not every assemblage of men, in whatsoever manner congregated, constitutes a body politic; but a mass of persons associated by agreement as to rights and by community of interest [1]

"A multitude of men," says Wolff,[2] "associating together in a political society, is called a people, or a nation; a multitude of men, therefore, associating for any other purpose than that of political society, is not a nation.

Nations or states are bodies politic, communities of men who procure their safety and their well-being by combining their forces.[3]

A nation is a people permanently occupying a definite territory, having a common government peculiar to themselves, for the administration of justice and the preservation of internal order, and capable of maintaining relations with all other governments.[4]

The πόλις of the Greeks (a singular noun from πολύς, many), the *populus* (same root) or *civitas* or *respublica*, of the Romans, the nation, state, body politic, or commonwealth of modern times, is a body of human beings united in one common society for internal peace and order and for external protection.[5] "The *vinculum juris* is essential and a community of benefits." [6]

A state is a community of persons living within certain limits of territory, under a permanent organization, which aims to secure the prevalence of justice by self-imposed law.[7]

[1] Cicero, De Resp., I. 25.

[2] Jus Gentium.

[3] Vattel, Droit des Gens, p. 85, Paris, ed. 1835.

[4] Field, Int. Code, 2d ed. p. 2.

[5] John Randolph Tucker, in paper read before the Social Science Association, September 6, 1877, at Saratoga, New York.

[6] *Ib.*

[7] Woolsey, Int. Law, p. 49.

"The state," says Johnston, "is all this and more." "The foregoing definitions by three eminent American jurists," says a contemporaneous writer, "approach the subject-matter from their respective points of views, — Field, from that of international law, Tucker, from that of jurisprudence, Woolsey, from a theory of rights. After the definitions of these vigorous and lucid thinkers, coinciding so nearly with the present writer, it is with much diffidence that a new definition is offered. An earnest desire for philosophical exactness must be his apology."[1]

The author of "A Theory of the State" contributes this definition: "A state is a separate community of human beings, associated in natural and jural relations, dwelling in its own proper territory, under an organized civil government, self-existent, autonomous, and sovereign."[2] The writer continues, "The first conception in this definition of the state looks to the persons who compose it. They are the members of the body politic. Collectively they are the people, which term includes every individual belonging to the state, and is sometimes used to express the idea of the state. This '*cætus multitudinis*' is, however, from the nature of things, incapable of giving expression to its will, except through an organ sanctioned by prescription and general consent. It is chaotic, inarticulate, and inoperative, except through the intermediation of the body of its citizens."

"Under the present custom of Europe," says a recent author,[3] "the possession of some territory is essential to the idea of a state; and within that territory each state has — except as to sovereign princes, their ambassadors and their forces — absolute jurisdiction. But the national character goes beyond the territory, and gives rise to a distinct sta-

[1] William Preston Johnston, A Theory of the State, not yet published.
[2] *Ib.*
[3] Hearn, Aryan Household, pp. 379, 380.

tus. . . . But as between nations, nationality does not admit of degrees."

"Had Don Pacifico," says Sir Alexander Cockburn ("Nationality"), "been naturalized at Gibraltar instead of having been born there, he would not have been the less entitled to British protection."

"A civilized community presupposes a government of law. If that government be a republic, its citizens are the sole *sources*."[1]

§ 3. Among other attributes of sovereignty on the part of the state is the right to determine the conditions and qualifications which shall entitle individuals generally within her territory or under her jurisdiction to national protection.

Within narrower limits the state exercises the further right to say who shall be deemed "citizens" or "subjects," with reference to the enjoyment of certain privileges and immunities, not extended to the masses of the population. These latter, however, — under many systems of government constituting a large majority of the populace, — are entitled to national protection, in return for the allegiance which they yield the state.

The first class is composed of the individuals in the community who are invested by the actual government with full *political privileges*, as well as *civil rights;* while the second class comprises those who enjoy civil rights only. Among political privileges may be enumerated the privilege to vote and to hold office; among civil rights, is the right to protection and security to person and property, under the fundamental law of the society of which individuals happen to be members.

It will be seen that the enjoyment of the highest and most valuable prerogatives of a citizen are practically much qualified and restricted. They are under the control of, and are

[1] Antislavery Examiner.

regulated by the actual law which represents the sovereign power of the state; whereas the enjoyment of the customary rights which pertain to the masses of the population are practically unqualified and unrestricted.

In addition to protection to life, liberty, and property, the class which exercises *political privileges* in a community participates in the governing power either by themselves or their representatives. The class which enjoys *civil rights* is equally entitled to complete protection to life, liberty, and property; but the individuals composing it cannot exercise political privileges under any claim founded simply upon the possession of civil rights.

"Nothing is more difficult," said Calhoun,[1] "than the definition or description of so complex an idea as a citizen; and hence, all arguments resting on one definition in such cases almost necessarily lead to uncertainty and doubt. But though we may not be able to say with precision what a citizen is, we may say, with the utmost certainty, what he is not. He is not an alien. 'Alien' and 'citizen' are correlative terms, and stand in contradistinction to each other. They, of course, cannot co-exist. They are, in fact, so opposite in their nature that we conceive of the one but in contradistinction to the other."

"In the United States," says Lawrence,[2] "it is incorrect to suppose that *alien*, as opposed to *citizen*, implies *foreigner* as respects the country. Indians are the *subjects* of the United States, and therefore are not, in mere right of home birth, citizens of the United States. . . . This distinction between *citizens* proper, that is, the constituent members of the political sovereignty, and *subjects* of that sovereignty, who are not therefore citizens, is recognized in the best authorities of the public law. (See Puffendorf, "De Jure Naturæ," Lib. VII. cap. 23). For the same reason, a slave, it is clear,

[1] In a speech in the Senate of the United States, April 2, 1836.

[2] Ed. Wheaton's Int. Law, p. 899.

cannot be a citizen." — *Opinions of Attorneys-General*, Vol. VII. p. 749.

"Citizenship, in its narrow sense, confers the imprescriptible right to speak for the community, to act as its authoritative exponent. It is the true voice of the people (*vox populi*), and is ascertained by the general consent, as manifested in the fundamental law and in the history of the commonwealth. It varies in different countries, and in the same country at different epochs. It may be recognized by the written law or merely by usage and tradition. In England it is vested in the body of freeholders; in the United States and France, in the adult male citizens. In constitutional governments it utters itself through the suffrage; in others, through the power of public opinion. But the state exists by virtue of the people who compose it. No people, no state. Hence it ought to be *for* the people."[1]

§ 4. It is a doctrine of international law that each state warrants, or is presumed to warrant, full and complete protection to the life, liberty, and property of all the individuals within her jurisdiction. This protection the state is presumed to extend to alien friends, resident or commorant within her territory, as well as to her own citizens or subjects. The extent or character of this protection may not, however, be measured out to alien friends, as it may be to citizen or subject; for as it is her concern alone, it is competent for the state to deny to her own citizen or subject protection; she may not, however, refuse protection to an alien friend within her jurisdiction, except at her peril. And it is, in part, the province of international law to see that full and complete protection is extended to alien friends within foreign jurisdictions. Whenever a state fails to give alien friends this protection, she is usually held to accountability by the state of which the alien is citizen or subject; and it

[1] Wm. Preston Johnston, A Theory of the State, not published.

is the privilege of each state to determine what individuals possess the *national character*, and what individuals, irrespective of this character, shall be entitled to her *protection*, as well as to decide how far, under the circumstances of each case, this insistance shall be carried.[1]

§ 5. In the law of nations, "citizen" is a term applicable to every member of the civil society, every individual who belongs to the nation.

This character is acquired in various ways, according to the laws of each state. In many states *birth* is sufficient to confer it; so that the child of an alien is a citizen from the fact of having been born within the territorial limits and the jurisdiction.[2]

In other states *parentage* suffices, and the child of a citizen,[3] although he may never have placed his foot on the soil of his fathers, is likewise a citizen.[4]

[1] Phillimore, Int. Law, Part V. ch. 1; Grotius, Lib. II. cap. 25, sect. 9, 11; Vattel, Lib. II. cap. 6, sect. 7. The case of Koszta, which is discussed more fully hereafter in the text (*supra*, p. 1), affords an apt illustration of the distinction pointed out. For it may be admitted, for the sake of argument, that although Koszta did not possess, at the time of his apprehension, the full and complete rights of *American citizenship* or *American nationality*, he was nevertheless, under the circumstances, justified in demanding, and was entitled to receive, the *national protection* of the United States. To secure Koszta's arrest, the territory of Turkey was invaded by Austria; and it was no doubt *primarily* the duty of Turkey to protect him while on her soil; but the sovereign being unable to afford this protection, authorities of the United States, who happened to be present, intervened; and the ground of interference by the United States, as stated in the despatches of Mr. Marcy, was the inability or refusal of the Turkish sovereign to shield from violence an individual who was entitled to American protection.

[2] It is so in England and in the United States [but the births must be "*within the jurisdiction*"]. It was so formerly in Spain; but the rule now is that he is a citizen of Spain who is born in Spanish dominion, of father or mother, or at least of a father, who was born or has established a domicile in the kingdom of Spain.

[3] The legitimate child follows the status of the father; the illegitimate child takes the status of the mother.

[4] It is so in England (Stat. 4 Geo. II. ch. 21). It is the father, not the

Elsewhere, *domicile*, that is, a peculiar character of establishment, or a certain number of years of continuous residence, from which is inferred the intention to remain permanently, adapts or fits aliens to obtain citizenship (*habilita à los extrangéros para obtener la ciudadanià*); and in nearly all states the sovereign is accustomed to concede citizenship, on compliance with certain conditions, as a *privilege* to aliens. [Bello, "Derecho de Gentes," Paris, 1864, pp. 73, 74.]

Every human being has a fixed domicile, which originally is the place where his parents lived at the time of his birth, or if that place is not known, the place of which he has the earliest recollection, or, beyond his recollection, where he was first seen and known by others; and that continues to be his domicile until he acquires another. It was said by a court of New York that residence or domicile is more a question of fact than of law, and depends less upon the application of any general rules than upon a consideration of the circumstances of the particular case, it being usually the result of voluntary action.[1]

The dominion of a state operates as well upon aliens as upon citizens, but in a different way. Dominion over the former follows the limits of the territory: the state cannot give laws or orders to individuals who are not members of the civil society, except when they are within its territories.[2]

Under the laws of Great Britain and the United States, the impressment of an individual with the character of citizen, or member of the civil society into which he is born, is not, however, exclusive.[3]

mother, who transmits the character of subject of England by birth to the child born in a foreign country. In France, by art. 10, Civil Code, the father or the mother. In Spain, according to Law 7, *cited*, the same rule is followed as in England, provided the father *has not contracted a domicile out of Spain.*

[1] In Matter of Thomas Bye, 2 Daly, 525, New York C. P. Sp. T., 1869. Wait's N. Y. Digest Reports, Vol. IV. p. 303.

[2] Pando, Elementos de Derecho Internacional, pp. 140, 141.

[3] 25 Edw. III. Stat. 2; 7 Anne, c. 5; 4 Geo. II. 21; 13 Geo. III. cap. 21. United States Revised Statutes, sect. 1993, 1995, p. 351.

There are two classes of persons who by the law of Great Britain are deemed to be natural-born British subjects: 1. Those who are such from the fact of their having been born within the dominion of the British Crown. 2. Those who, though born out of the dominion of the British Crown, are by various general acts of Parliament declared to be natural-born British subjects. By an act of Congress, passed Feb. 10, 1855, it is provided that "Persons heretofore born, or hereafter to be born, out of the limits of the jurisdiction of the United States, whose fathers were or shall be at the time of their birth citizens of the United States, shall be deemed and considered, and are hereby declared to be, citizens of the United States: *Provided*, *however*, That the rights of citizenship shall not descend to persons whose fathers never resided in the United States."

There was no authoritative definition of the phrase, "citizen of the United States," until the promulgation of a comparatively recent act of Congress, which is usually referred to as the Civil Rights Bill.[1]

Every Frenchman born of a Frenchman in a foreign country is a Frenchman.[2] As to children born in France, they were under the code French if their fathers were French, aliens if their fathers were aliens, but with a right in the latter case to claim French citizenship on making a declaration and fixing their domicile in France. An exception has been introduced, however, by a law passed in 1851, by which, if the alien father were also born in France, the child is deemed French, but is at liberty to claim the status of an alien on attaining twenty-one years of age.

The Prussian law of 1842 declares that "every legitimate child of a Prussian subject is, by birth, a Prussian subject, even though born in a foreign country."

[1] 14 U. S. Statutes at Large, p. 27, sect. 1; U. S. Rev. Statutes, sect. 1992, p. 351; 16 Wall. (U. S.) Rep. p. 36.

[2] Code Napoleon (Art. 10).

In Italy, the child of a citizen is a citizen. When the father is unknown, the child of a citizen-mother is a citizen. When the mother has lost her citizenship before the birth of the child, the dispositions of appropriate articles of the code become applicable. If even the mother is unknown, a child born in the kingdom is a citizen. The child of an alien who has maintained his domicile within the kingdom uninterruptedly for ten years is considered a citizen; residence for commercial purposes is not sufficient to constitute domicile. The child may, however, elect to be considered an alien on making the declaration prescribed in Article 5. When the alien has not maintained his domicile in the kingdom for ten years, the child is considered an alien; but the dispositions of the first two paragraphs of Article 6 are applicable to the case.[1]

"Of these two tests of nationality — the place of birth and the nationality of the father — neither is at present adopted without qualification by British, French, or American law. The laws of these countries exhibit, in fact, different combinations of the two, Great Britain and the United States laying chief stress on the place of birth, while in France the father's nationality determines, though not absolutely and in all cases, that of the child; and this latter theory has found acceptance among other European nations."[2]

"Aristotle defines a citizen to be one who is a partner in the legislative and judicial power, who shares in the honors of the state, while he who has no part in them is a mere sojourner and alien. *Λέγεται μάλιστα πολίτης ὁ μετέχων τῶν τιμῶν . . . ὥσπερ μέτοικος γάρ ἐστιν ὁ τῶ τιμῶν μὴ μετέχων.*" — *Aristotle de Respub.* Lib. III. cap. 5 D.[3] In some of the Gre-

[1] Revised Code of Italy.

[2] Report of a Commission appointed by the Queen of Great Britain for inquiring into the Laws of Naturalization and Allegiance; — Papers on Expatriation, Naturalization, and Change of Allegiance: Washington, 1873.

[3] "From this it is clear that there are many sorts of citizens, and that he who shares the honors of the state may be called a complete citizen. Thus Achil-

cian states particular privileges were granted to aliens, such as the right of marriage, the right of acquiring landed property, immunity from the tax imposed on resident aliens. The class which possessed these combined privileges was called *ἰσοτελεῖς*. They were a favored class at Athens, who enjoyed all civic rights except those of a political nature. They bore the same burdens as the citizens, and could plead in the courts, or transact business with the people, without the intervention of a *προστάτης* (patron). According to Niebuhr, the rights referred to, which were generally expressed by the word *ἰσοπολιτεία* (equality of civic rights), were the result of relations entered into by treaty between two perfectly equal and independent cities, mutually securing to their citizens all those privileges which a resident alien could exercise not at all, or only through the mediation of a *guardian*. The privileges enjoyed by a freeman of a city, in virtue of its isopolity, were also conferred on individuals in unconnected states by the relation of *προξενία*. The *πρόξεναι* enjoyed special privileges, which were greater than those of the *ἰσοτελεῖς*. They bore the same burdens as the citizens, but were not put on the list of citizens nor enrolled as members of a *δῆμος* or *φῦλή*. Such persons enjoyed the same rights and privileges as the *ἰσοπολίτης*.[1] But these did not extend to the assembly of the people ("History of Rome," Vol. II. p. 38); nor were they citizens, according to Aristotle's definition, recurring to which "we find the essential properties of Athenian citizenship to have consisted in the share possessed by every citizen in the legislature, in the election

les, in Homer, complains of Agamemnon's treating him 'like some unhonored stranger'; for he who shares not in the honors of a state is, as it were, a stranger; and whenever such a thing as this is concealed, it is for the sake of deceiving the inhabitants." — *Aristotle*, Book III. ch. 5, translation of Edward Walford, London, 1853.

[1] *Δῆμος* (*πλῆθος*), — the commons, the people, the free citizens of Athens. *φῦλή* — a union according to local habitation, like English hundred or county. *μέτοικοι*, — a general class of aliens at Athens corresponding to that of the *peregrini* at Rome.

of magistrates, in the δοκιμᾰσία (enrolment or muster), and in the courts of justice." — SMITH, *Dictionary of Greek and Roman Antiquities*, p. 289.[1]

§ 6. "He, and he only, is a citizen," says Aristotle, "who enjoys a due share in the government of that community of which he is a member." "He is justly a citizen," says the same authority, "who is created such by the act of the commonwealth."

Among the ancients, birth of itself never fixed political station, or conferred the privileges of a citizen. Both the Athenians and the Romans acted wisely and liberally on the subjects of naturalization and allegiance.[2]

There was a time, when, under the influence of feudal ideas, nationality was determined exclusively by the place of birth, *jure soli*. But it was not so anciently; for under the laws of the Athenians, as among the Romans, the child followed the nationality of its parents, and it was the tie of blood — *jus sanguinis* — which determined nationality.[3]

The true bond which connects the child with the body politic is not the matter of an inanimate piece of land, but the moral relations of his parentage.[4]

§ 7. Under view of the law of nations, natives, or natural-born citizens, are those born in the country, of parents who are citizens. The country of the father is that of the children. When children come to the age of discretion,[5] when they attain their majority,[6] or when they are in any other way emancipated, as in the case of a woman marrying, who, as

[1] Lawrence, Naturalization and Expatriation, Appendix to Wheaton, p. 892.

[2] Naturalization and Allegiance (Miscellaneous Pamphlets, Congressional Library, Washington).

[3] Stoicesco, Étude sur la Naturalisation, Paris, 1876, p. 286.

[4] Vattel, sect. 216–220.

[5] Vattel, Book I. p. 101.

[6] Foelix, Droit Int. Privé, N. Y., pp. 56, 57, ed. 1866.

the result of marriage, is no longer *sub potestate parentis*, — they may abandon the society into which they were born, and acquire a different national character. It is necessary that a person be born of a father who is a citizen of the country; for, if he is born of a foreigner, it will be only the place of his birth, and not his country.[1] The legal presumption in favor of the nationality of birth, or the domicile of origin, continues until proof of change.[2] "The nationality and the domicile of origin are preserved as long as the child is a minor; for during this period, he has not, legally speaking, any will. But as soon as, agreeably to the law of the domicile of origin, the child attains the age of majority, he is free to change his nationality and to choose another domicile. There is a legal presumption in favor of the preservation of the original nationality, or the domicile of his origin, up to the time of proof of a change." [3]

§ 8. "There is," says McLeod, "something in the idea of native country which is intimately connected with the doctrine of allegiance. It is not, however, the spot of earth, upon which the child is born that connects him with the national society, but the relation of the child's parents to that society. In the ordinary concerns of life, there is no need of such minute distinctions; and the majority of men are possessed of too little discrimination to be able to understand it. Even statesmen are not always wise; and designing men find it for their interest to keep up a confusion of ideas upon important subjects. In the present discussion, nevertheless, it is necessary that I distinctly state to you the true bond which connects the child with the body politic. It is not the inanimate matter of a piece of land, but the moral relations of his parentage. Let a child be born within the walls of a church, this does not make him a church-member;

[1] Vattel, Book I. p. 101.
[2] Foelix, Liv. I. p. 57, ed. 1866.
[3] *Ib.* pp. 56, 57.

but if the parent or parents be in connection with the church, so is the offspring." [1]

"If we judge of the country of a man by any other rule than that where his permanent residence is fixed, and to which he politically belongs by his own will, and the enjoyment of the privileges of citizenship, we must establish a principle which will be partial and capricious: (1) one age and nation, judging by its ideas and prejudices, will say a man belongs to that country where his ancestors resided; (2) another, where he himself was born; another (3) where his parents were; and another (4) again where they resided and lived at the time of his birth; others (5) again will dispute and contend as to whether he belongs to that country in which his father or his mother may have resided or been born, etc." [2] "Residence produces an attachment. Education cherishes affection for the scenes of early life; but only moral relations lay the foundation for moral obligation. It is the enjoyment of the privileges of society that lays the foundation for obedience to its authority. It follows from this, that, protection being the end of civil government, the sovereign has no other claim upon the allegiance of the subject than what arises from the protection which he affords. As is the protection which I ask and receive, so is the fealty which I owe. If I ask none, I am under no allegiance; if I receive none, I have nothing to return. It is the very essence of despotism to claim authority over me without an equivalent." [3]

§ 9. "When we speak in general of the duty to our country, the term is to be understood as meaning the state of which a man is an actual member; since it is the latter, in preference to every other state, that he is bound to serve with ut-

[1] Political Pamphlets, — Expatriation and Allegiance, — Congressional Library, Washington, D. C.

[2] Naturalization and Allegiance, Miscellaneous Pamphlets, Vol. IV. p. 20, Congressional Library, Washington, D. C.

[3] *Ib.*

most efforts." — *Vattel*, Book I. ch. xi. sect. 122. "There is no obligation," said an American author in 1815,[1] "from the social compact upon man to continue in allegiance to the government under which he was born." And this is, in substance, the language of Vattel.

After stating that there was great diversity and much confusion of opinion as to the nature and obligations of allegiance, the executive branch of the United States Government many years ago insisted that the sounder and more prevalent doctrine was that which denied the claim of perpetual allegiance and conceded the right of expatriation.[2]

§ 10. The language of Vattel[3] is: "By the law of nature alone, children follow the condition of their fathers, and enter into all their rights. The place of birth produces no change in this particular; for it is not naturally the place of birth that gives rights, but extraction. Children born at sea, out of the country, in the armies of the state, in the house of its ministers at a foreign court, are reputed native citizens. Every man, born free, may examine whether it be convenient for him to join in the society for which he was destined by his birth. If he finds that it will be of no advantage to him to remain in it, he is at liberty to leave it."

These and similar expositions of public or international law, by civilians and publicists generally, are only confirmatory, and constitute developments of the doctrine *jus sanguinis*, which prevailed among the ancient free republics, preceding the feudal doctrine *jus soli*, which had its existence and recognition in a governmental system based upon feudal tenures and military vassalage. The influence of the wiser principles and more liberal ideas of the early republics is felt, and is apparent to-day in the legislation and practices of modern European states and of America.

[1] "The Causes of the Present War" (1812–1815), Alexander McLeod, Political Pamphlets, Congressional Library, Vol. III., Washington, D. C.

[2] American State Papers, Vol. XLIV. p. 987. [3] Sect. 216–220.

§ 11. The father or mother, who transmits his or her status to the child, may change his or her condition in the interval between the conception and the birth of the child. When it is the father who transmits nationality to the child, the status of the father at the time of conception is considered. If, on the contrary, it is the mother who transmits nationality to the child, — which would be the case when there was no marriage between herself and the father of the child, — attention is paid to the moment of delivery.[1]

Various applications of this idea are made by Gaius.[2] In one of these, Gaius supposes the case of a woman (*peregrin*) who had become a Roman citizen during gestation. At the moment of delivery, she is a Roman citizen; then the child will be a citizen of Rome, *si vulgo conceperit.* If, on the contrary, she was validly married to a man who was *peregrinus*, according to the law of their country, although this marriage should not be valid, or take effect in Roman law, nevertheless a *senatus consultum* of the Emperor Adrian determined that the child should be *peregrinus.*[3]

Anciently the word *peregrinus* described all those who were not Roman citizens; in a narrower signification it embraced those who had no legal capacity or rights, that is to say, slaves; and then, on the other hand, the people of nations who bore no relation to the Roman people.

Citizenship being the exclusive privilege of Roman citizens, *peregrini* did not enjoy the *jus civile*, and the advantages which resulted from it. Among themselves, in their country, they invoked their national law; but at Rome, *peregrini* could appeal only to the *jus gentium*,[4] and this law was administered by a magistrate who was called *prætor peregrinus.* The different methods of regulating and vindicating the rights of

[1] Stoicesco, *ib.* pp. 19, 20, citing Ulpian.

[2] Commentaries, I. sect. 90.

[3] Gaius, Commentaries, sect. 92.

[4] "Jus gentium, quod naturalis ratio inter omnes homines constituit," Cicero, *De Legibus*, I. 5, 6; Ortolan, Generalization of Roman Law, 573.

citizens and those of *peregrini* are summarized by an author already cited.[1] Although it was true, as has been stated, that at first *peregrini* enjoyed only the law of nations, yet practice and prætorian legislation endeavored, by every means, to remove as much as possible the distinction between the civil law and the law of nations, as advance was made towards civilization.[2]

In addition, certain privileges (more or less extended), attached to all the residents in the city, which resulted in a further division according to rank, namely: (*a*) *quirites*, (*b*) the *Cœrites* or *ærarii*, (*c*) the *proletarii*, and (*d*) the *nexi*. But when mention is made of *Roman citizens*, the reference is only to those who were in the full enjoyment of all rights, that is, the *cives optimo jure*.[3]

"The opposite of *civis* is *peregrinus* (the alien), *hostis* (the stranger or enemy) — for to republican Rome, till she had completed the conquest of the known world, those two words were synonymous, — and *barbarus* (the barbarian)."[4]

It is beyond the scope of this discussion to do more than refer to the same author for a description of the *Latini* and the *Italici*, who, from time to time, were invested with the privileges and rights of citizenship, or to consider the condition of the slaves.

"A legitimate child, wherever born, is a member of the nation of which its father at the time of its birth was a member; or, if he was not then living, of the nation of which he was at the time of his death a member, except as provided in the next article." — FIELD'S *International Code*, p. 132.[5]

[1] Stoicesco, *ib.* pp. 26, 33.
[2] *Ib.* p. 33 *et seq.*
[3] *Ib.* pp. 16, 18.
[4] Ortolan, 598, 599.
[5] This is the law in most European states. Westlake, p. 16; Foelix, I. p. 54; but not in England or in the United States. However, in Ludlam *v.* Ludlam, 26 New York Rep. 371, the court says: "Citizenship of the father is that of the child, so far as the laws of the country of the father are concerned." And it has been held in the United States that the national character of the parent is of no importance, even in the case of a child born within

"The word 'fatherland' is suggestive of two root ideas in the development of nations. Kinship was the tie that first held communities together in primitive times. Passing from the household, it bound family to family, tribe to tribe, and held all in obedience to a recognized head. We see this illustrated in the Biblical sketch of Lot and Abram. Nay, more, it influenced men naturally or artificially of kin to each other to look upon others as inferiors, if not foes."—"Ireland Land Question," *The Catholic World*, July, 1880.

§ 12. "It is to be observed," says Lawrence,[1] citing Coke Reports, fol. 6, 18, "that it is neither *cœlum* nor *solum*, but *ligœntia* and *obedienta* that makes the subject born; for if enemies should come into the realm and possess a town or fort, and have issue there, that issue is no subject of the King of England, though he be born upon his soil, for that he was not born under the liegeance of a subject, nor under the protection of the king. There are three incidents to a subject born: First, that the parents be under the actual obedience of the king; second, that the place of his birth be within the king's dominions; and third, the time of his birth; for he cannot be a subject born of one kingdom that was born under the liegeance of the king of another kingdom, albeit afterwards one kingdom descend to the king of the other." Hence, also, the children of an ambassador, born in a foreign country during his mission, are not subjects of the country to which their parent is accredited.

§ 13. Roman and French law deemed every person to belong to the country of which his father was native until,

the territory to a parent who is not, and has not taken any step towards becoming naturalized there, and who removes the child while an infant. Lynch *v.* Clarke, 1 Sandford's Ch. (New York Rep.) 585. But this decision seems not to be entirely approved (Munro *v.* Merchant, 26 Barbour's (New York Rep.) 400, 401), and probably would at the most be considered as authority only in regard to the right of succession to real property within that state. *Ib.*

[1] Ed. of Wheaton's Int. Law, appendix p. 895, 166.

arriving at the years of discretion, he chose a country and domicile for himself.[1]

"The courts of the United States and England," says Lawrence,[2] "were alike agreed in rejecting the idea of a double allegiance, the only difference between them being as to the period at which the independence of the United States should date; the former basing it on the Declaration of Independence of July 4, 1776, and the latter on the definitive treaty of peace of September 3, 1783. The recognized doctrine is that by the separation of the two countries, Great Britain and the United States became respectively entitled, as against each other, to the allegiance of all persons who were at the time adhering to the governments respectively; and that those persons became aliens in respect to the government to which they did not adhere."— *Kent's Commentaries*, Vol. II. p. 60, and cases there cited.

If double allegiance or national character, resulting either from birth or from operation of law, were allowed, a minor should be permitted to choose a single allegiance within a reasonable time after attaining to full age, according to the law of his domicile. (See Ludlam *v.* Ludlam, 26 New York Rep. 356.) Such a declaration of alienage is now allowed by the Naturalization Act, 1870, 33 Vict. ch. xiv. sect. 4.[3]

That any one should be a member of two nations at once is inadmissible in principle.[4]

§ 14. The first principal division of persons in Roman law under the Republic was into *citizens* and *not citizens*.[5]

There were citizens by birth, and those who had become citizens. Those who were not citizens as the result of birth

[1] Roman Law, 6, tit. 1, Book 50, Digest, ad municipalem, et de incolis; Code Napoleon. Foelix, Droit Int. Privé, Liv. I., pp. 53–58, Paris, ed. 1866.

[2] *Ib.* p. 968.

[3] Field's International Code, second ed., p. 130, note.

[4] Westlake, Private International Law, p. 21, sect. 22.

[5] Stoicesco, Etude sur la Naturalisation, p. 12.

might become citizens by the following methods: (*a*) by legislative will; (*b*) by grant or charter accorded to a people, to a town, or to an individual; (*c*) by emancipation.

Those *not citizens* were slaves or freemen. There was no division of slaves. Those not citizens who were free were divided into: (*a*) *peregrini*, (*b*) *Latini*, (*c*) *Italici*.

It is necessary to distinguish between Roman citizenship, that is, citizenship in the metropolitan city, and citizenship in a municipality of the state: they were distinct and independent characters.

In the early history of Rome, only those could boast of the proud title "citizen" who were Romans by birth, and the few *peregrini* who, being domiciled at Rome or in the environs, had been naturalized.[1]

The particular rights included in the *civitas Romana* were some of a political nature, appertaining to the JUS PUBLICUM, since the participation in the government of the state depended on them: such were the *jus suffragii* and the *jus honorum*. Others, especially the *jus commercii* and the *jus connubii*, belonged to the JUS PRIVATUM, and were essential to citizenship.

The right of Roman citizenship was acquired, first, by birth, when the parents — or at least the one whose condition the child followed — were Roman citizens; second, by affranchisement under certain circumstances; third, by a special concession, granted originally by the people and the senate, afterwards by the emperor, sometimes in favor of entire populations or cities, and sometimes in favor of individuals. It was withdrawn from entire populations, as well as from individuals, as a punishment, and from individuals, also, as a consequence of the loss of the personal liberty essential to citizenship. There is enumerated among the causes of forfeiture, without *maxima capitis diminutio*, voluntary renunciation, which includes the acceptance of the right of citizenship

[1] Stoicesco, Etude sur la Naturalisation, p. 15; Cicero, Pro Domo, 29.

in a foreign state, as being incompatible with retaining the rights of Roman citizenship.

At first there was no intermediate degree between the *cives Romani* and those who had not the right of citizenship, the *peregrini;* for though the plebeians occupied a position subordinate to the patricians, they yet made part of the *populus*, properly so called; and, according to Savigny, the notion of *civis* and *civitas* had its origin in their union. In later times there were certain degrees among the *peregrini.* There was a distinction between those who did not participate in the right of citizenship and in the *jus civile*, which depended on it, but only in the *jus gentium*, and others, to whom was conceded a greater or less participation in the *jus civile*, especially in the private advantages which it conferred. To the *Latini colonarii* was granted the *commercium* and not the *connubium;* but when the republic had become a pure monarchy, as the right of citizenship lost its importance for individuals, and the *jus civile* and *jus gentium* became assimilated and almost merged into one, the right of Roman citizenship was more liberally granted, until, under Caracalla, and more completely still under Justinian, all the free subjects of the Roman Empire obtained the right of citizenship. Marezoll, "Lehrbuch des Institutionen des römischen Rechtes," sect. 74, 75 (Lawrence's Wheaton's Int. Law, p. 892, ed. of 1863).

An English publicist insists that the Code Napoleon erred grievously against the doctrine of the comity of states when it drew a distinction between the civil rights and the natural rights of the foreigner, denying him the enjoyment of the former rights except when secured by a treaty of reciprocity.[1]

Of all the *peregrini* in Rome, — taking this word in its most extended sense, — the Latins were the most privileged. They were permitted to engage in trade and to contract

[1] Sir Robert Phillimore, Inaugural Address, Annual Conference of the Association for the Reform and Codification of the Law of Nations.

marriage; and they enjoyed other privileges on arriving at the Roman city.

There were three general methods accorded the ancient Latins (*Latini veteres*), by which they might become Roman citizens: —

(1.) When a Latin left in his native city all his ancestors, to come to Rome to establish himself there, he was entitled to demand the title of Roman citizen.

(2.) When a Latin had filled certain honorable offices or stations, in either the civil or the military service of his city.

["It was thus," remarks Stoicesco, "that the fine policy of the Romans attracted to Rome talent of every nature that they found among their allies."]

(3.) A law of *senilia Glaucia* offered citizenship to Latins who should successfully maintain a charge of embezzlement against a Roman magistrate.

Later — that is, during the classic period — there were eight methods by which *Latini Juniani* were admitted to citizenship. These are enumerated by Stoicesco, pp. 125–134.

Citizenship (*civitas*, *patria*, *origo*) in any municipality was produced by four causes: —

"(1.) Birth (*origo*, *nativitas*) was the commonest title; and hence the word '*origo*' is used as equivalent to '*civitas*.' Legitimate children had the *civitas* of their father; illegitimate, of their mother. Some states had the privilege of according to legitimate children the *civitas* of the mother in addition to that of the father.

"(2.) *Adoptio* gave to the adopted child, in addition to his original *civitas*, that of his *adopted father*.

"(3.) *Manumissio*, when perfect, gave to the freedman the *civitas* of his *patronus*.

"(4.) *Allectio*, election by the governing body of a community, admitted strangers to *civitas*.

"It follows that a man might be a citizen of several states, — of one by *origo*, another by *adoptio*, another by *allectio*. This

may seem to be contradicted by Cicero, — 'Duarum civitatum civis esse nostro jure civili nemo potest.' — *Pro Balbo*, 2, — but Cicero is here speaking of independent sovereign states, not of *the dependent states composing the organism of the Roman Empire.*

"When the *lex Julia municipalis* had given Roman citizenship to all Italy, and an ordinance of Caracalla, subsequent to the time of Gaius, had extended it to all the provinces, every member of any municipality had at least a double citizenship: he was citizen of Rome as well as of the smaller municipality.

"The principal effects of citizenship in a municipality were threefold: —

"(1.) Obligation to bear certain burdensome municipal offices (*munera*).

"(2.) Subjection, or obligation of submission, to the municipal magistrates and tribunals, including liability as defendant to be sued before its courts (*forum originis*).

"(3.) Subjection to municipal laws, including the determination of a man's personal capacity — infancy, minority, majority, capacity of disposition, etc. — by the laws of the community in which he had *civitas* (*lex originis*).

"In all these effects a man's Roman citizenship was of slight importance compared with his municipal citizenship. The burdens (*munera*) of the metropolitan city were provided for by arrangements peculiar to Rome. The liability of a defendant to be sued before a Roman forum was limited to the time when he happened to be resident in Rome, and then was subject to many exceptions, included under the general name of *jus revocandi domum;* and in any case of collision between the laws relating to personal capacity, the laws of Rome always yielded to those of the local *patria* or *father-town* (*lex originis*).

"In all the above consequences domicile (*domicilium*, *incolatus*, *domus*) had an operation similar to *civitas*. Domicile is the place which a man has voluntarily chosen for his perma-

nent residence, as the central station of his fortunes, and the headquarters of his dealings and dispositions.

. . . . . .

"A man was liable to *munera* of the city which he had chosen for a domicile as well as of that where he had the rights and duties of citizenship.

. . . . . .

"A man could be governed by only *one lex;* and if he was a citizen in any municipality, was governed by *lex originis;* if he was nowhere citizen, he was governed by *lex domicilii.* [*Domicilium originis*, a monstrous combination of modern writers, ought to express the coincidence of domicile and fatherland, but is intended to express the paternal domicile, — domicile of a man's father.]

"The subversion of the Roman Empire in the West abolished the importance of the municipalities; and, with the exception of Switzerland, where it still prevails, the doctrine of *Origo* disappeared from those countries which are still influenced by Roman jurisprudence. The doctrine of *Domicilium* still survives, at least as to *forum* and *lex*, in private international law; what related to *munera* shared the fate of the other political institutions of the empire. (Savigny, Sect. 350–359.)

"We may observe that the reason assigned by Ulpian for the incapacity of Dediticius to make a will — his want of *patria* — appears inadequate; for, if he had no *patria*, at least he had *domicilium*, and we have seen that, in the absence of *patria*, a man's personal capacity was determined by his *domicilium*. We may infer that the equivalence of domicilium to patria — to say nothing of the modern maxim, 'Locus regit actum' (4, sect. 53, com.), the ability of even temporary residence, as opposed to domicile, to give validity to the mere form of a disposition — was not completely established, not at all events in favor of Dediticius, in the times of Gaius, or even in those of Ulpian." — *The Elements of Roman Law*, Gaius. Edward Poste, London, 1875, second ed., pp. 335–338.

Anciently, under the civil law of Rome, *domicile* gave to a person, not the character of *citizen*, but that of *inhabitant* of the city where he was established.

Citizenship was the result of *origo*, *manumissio*, *allectio*, *adoptio*.

Domiciliation made the inhabitant. But from the date of the constitution of Caracalla, which declared all subjects of the empire to be citizens, no matter in what city the local domicile was, Rome became the common country, and all inhabitants became citizens.

§ 15. It has been observed [1] that, in the course of events, under Roman law, additional methods by which aliens might acquire citizenship were introduced. These were as follows: (*a*) by legislative will; (*b*) by grant, or charter accorded to a people, a town, or an individual; (*c*) by emancipation.

The methods by which, as a rule, under the practice of modern states, citizenship may be acquired are not very different. They may be enumerated as follows: (*a*) by decree of the sovereign power, direct, or by legislative will; (*b*) by grant, charter, or treaty having reference to a people, town, or to an individual; (*c*) by cession, gift, or purchase of territory; (*d*) by emancipation. In the case of women, there is an additional method generally recognized by European and American states, by which citizenship or nationality may be acquired, namely, by marriage. "According to the constitutional jurists, other than those of England and the United States, the right of voting, or of at least being eligible as an elector, is the test of citizenship. The Dutch publicist, Thorbecke, says, in a discourse delivered at the Hague, entitled 'Des Droits du Citoyen d'Aujourd'hui,' which was translated into French in 1848 for M. Foelix's Review, 'What constitutes the distinctive character of our epoch is the development of the right of citizenship (*droit de cité*). In its most extended, as

[1] *Supra*, p. 22.

well as in its most restricted sense, it includes a great many properties (*facultés*). The right of citizenship is the right of voting in the government of the local, provincial, or national community of which one is a member. In this last sense, the right of citizenship signifies a participation in the right of voting in the general government, as a member of the state.'" — *Rev. Fr. & Etr.* Tome V. p. 383 (Lawrence's Wheaton's *Int. Law*, 393, ed. 1863).

The status of a Roman citizen was composed of three constituent elements, without which it never existed, — *freedom*, *city*, and *family*.

It was not alone the enemy made prisoner by the Romans who became a slave: the Roman who fell into the power of the enemy lost, at Rome, all his rights of citizen and freeman. Under such an institution, it is apparent, as has been pointed out, that each soldier fought, not only for country, but for property, personal rights, and freedom.[1] And the word *postliminium*, among the Romans, meant the reinstatement to his possessions, of one taken by the enemy, on return to his own threshold.

§ 16. The national character of an individual is determined either by the fact of birth or the ties of parentage, — and this constitutes the *nationality of origin*, — or by naturalization in another country, which creates *nationality by acquisition.*

Wolff says: "The members of the civil society, or every one of those who form it, are called *citizens;* he who is not a member of our society is called a *foreigner;* and a foreigner who is permitted to dwell and carry on business in another country than his own is called an *inhabitant.*" — *Institutions du Droit*, 3me partie, sect. 2, ch. i. 974, Tom. II. p. 140.

According to Vattel, "Citizens are the members of the civil society: bound to the society by certain duties and subject to this authority, they equally participate in its advantages.

[1] Ortolan, Instituciones, p. 240.

Inhabitants, as distinguished from citizens, are foreigners who are permitted to establish their residence: bound by their abode in the country to the society, they are subject to the laws of the state while they remain in it, and ought to defend it, since they are protected by it, although they do not participate in all the rights of citizen. A nation, or the sovereign who represents it, may grant to a stranger the quality of a citizen, by admitting him into the body of the political society. This is called naturalization." — *The Law of Nations*, Book I. ch. xix. sect. 212–214 (Lawrence's Wheaton's *Int. Law*, pp. 892, 893.)

"A man born in a state remains attached to the state to his death," says Doctor Bluntschli, who concedes to each state the incontestable right to determine the conditions by virtue of which individuals commence or cease to belong to the people or the country which this state represents.

According to Demangeat, the first personal law to which a man can be subjected is the law of the nation to which he belongs by his birth.

It is necessary, therefore, first of all, to ascertain of which nation the child born into the world is a member.[1]

States, in their legislation, determine this question in different ways: some regard above all the territorial connection, and, when in doubt, base it on the place of birth; others, taking principally into consideration the personal relations of the child with its parents, derive nationality from the parentage. This last principle has finally prevailed in most of the states of Europe, and it has superseded the feudal tradition, which, to make use of the expressions of Doctor Bluntschli, "degraded man to the level of considering him only a dependent of the soil." According to the same author, motives founded in nature, reasons of convenience and daily practice concur in rejecting the territorial principle, and in adopting the personal principle; moreover, "it is not from the country, but rather

[1] Foelix, Droit Int. Privé, Lib. I. pp. 53, 54, note.

from his parents, that the child receives existence, and all his being is derived much more from his authors than from the soil where he is born. Again, innumerable families, in travelling, stop now here, now there, without ever entering into any marked or durable relations with the place of their sojourn. How, then, can it be admitted that chance, in the accident of birth of a child in one place rather than in another, should decide, after the same fashion, his whole political existence as well as his nationality; whereas his true country cannot be found elsewhere than where the principal establishment of his parents is?"

Such had been, besides, the opinion of Vattel, who thus expresses himself on this subject: "Children naturally follow the condition of their parents, . . . the place of birth has nothing to do with it, and cannot alone or by itself furnish any reason for taking from a child what nature has given him; I say by itself, for the civil or political law may determine differently for particular considerations." Children then become subjects or citizens of the state to which belongs their parent at the time of birth, whether they be born in the country or abroad. This is also proclaimed by the French Civil Code, article 10 of which is to this effect: "Every child born of a Frenchman in a foreign country is French." This rule has been sanctioned by the legislation of many other states.[1] "In Brazil," says Demangeat,[2] "a peculiar doctrine ('système assez singulier') was adopted in 1860. The law governing the civil status of aliens who reside in Brazil, not being in the service of their country, may be equally applied

[1] Belgium, Civil Code, art. 10; Italy; Bavaria, Constitution, May 19, 1818; Prussia, Law of Dec. 2, 1842; the Kingdom of Saxony, Law of July 2, 1852; Würtemberg, Constitution, Sept. 25, 1819; Spain, Constitution, May 25, 1845; United States of America, Law of April 15, 1812; Great Britain. The laws of Portugal and of Brazil are substantially to the same effect; but each requires the children to enter and establish their domicile in the kingdom or empire.

[2] Foelix, Droit Int. Privé, Liv. I. p. 56, note *b*, ed. 1866.

to the children of such aliens, born in the empire, but only during their minority, — a reservation made in respect of their Brazilian nationality (" réserve faite à l'égard de leur nationalité brésilienne établie ") by Article 6 of the Constitution. As soon as they attain their majority this law ceases to be applicable to them; they then enter upon the enjoyment of their rights, and are subject to the obligations and duties of Brazilian citizenship, under the forms prescribed by the Constitution and the law."

Westlake recommends the adoption of the following general rule: "Legitimate children, in whatever region or place they may be born, are regularly members of the state of which their parents form part at the moment of their birth; but they may choose, if they prefer it, the nationality of the place of their birth."

Nationality may also be derived from marriage, in the sense that women follow, in full right, the national status of their husbands. The logic of this principle springs from the very nature of the contract entered into by the spouses; for marriage should constitute a union of the *ménage* and the community of property of the family; the two essential bases of which would fail if the spouses could preserve distinct (separate) rights, dependent upon two different states, and if the nationality of the husband did not draw to it that of the wife, in the same way that the domicile of the husband becomes the conjugal domicile.

§ 17. One of the accepted canons of modern private international law is that the law of the nation to which an individual belongs decides if he is native or alien, free or slave or serf, nobleman or plebeian; whether or not he enjoys civil rights [established] in the state; whether he can acquire a domicile and change it; whether, as a consequence of his absence, [from the country] measures may be taken for the

administration of his effects, or whether he may be declared legally dead.[1]

As a general proposition, this is undoubtedly correct; but two states *may* claim the same individual, and the controversy growing out of such a claim produces a conflict of laws.

The question is, How are these and similar conflicts to be settled, and what is the standard by which a proper resolution may be reached? The answer is (1) by deference to the comity of nations; and (2) by reference to international law, or to Roman civil law.

"It is a conceded principle that the laws of a state have no force *proprio vigore* beyond its territorial limits; but the laws of one state are frequently permitted by the courtesy of another, to operate in the latter for the promotion of justice, when neither that state nor its citizens will suffer any inconvenience from the application of the foreign law. This courtesy or comity is established, not only from motives of respect for the laws and institutions of foreign countries, but from considerations of mutual utility and advantage."[2]

As a general rule, the laws of one state do not have any force in another, unless the other voluntarily concedes it;[3] and this concession is usually made under what is called the comity of nations.

[1] Foelix, Droit International Privé, Paris, 1866, p. 81. Demangeat contests this principle, or rather the language in which it is formulated by Foelix, and says: "The idea which the author intended to express was, that in general it is necessary to consult French law to ascertain whether such a person is or is not French; the law of England to determine whether such an one is or is not English."

[2] 1 Seld. Rep. 340.

For demarcation between the powers of United States and State courts, in matter of Habeas Corpus, see Paschal, Annotated Constitution, p. 145. The relative powers in general of the Federal and State governments of the United States of America are described by the Supreme Court of the United States, in the case of The Collector *v.* Day, 11 Wall. p. 113.

[3] Pando, p. 143.

"The administration of foreign law by courts of justice under the comity of nations has given rise to an extensive department of juridical science, which has been termed private international jurisprudence. This branch of juridical science, which is concerned more especially with the conflict of laws, arising out of the relations of civil life which exist between the citizens of different states, proceeds upon a wise and liberal regard to the mutual convenience and mutual necessities of mankind. The real difficulty is to ascertain what principles in public convenience ought to regulate the conduct of nations in respect to one another." [1]

"Certain jurists have contended, that when the enforcement of a foreign law is not prejudicial to the interests of the state called to enforce the same, it is not so much a matter of comity or courtesy as a matter of paramount moral duty." [2]

The Roman civil law has been resorted to for the regulation of international affairs, and is regarded and respected by all nations alike, as containing the soundest and purest code for the adjustment of conflicts of law.[3]

§ 18. There are certain natural rights reserved to each individual in the very compact itself by which civil society is formed. There are other rights of which every nation is its own sole judge, regulator, and disposer. Of these latter rights is citizenship.[4]

What constituted citizenship in the United States, and what rights attached to the character, was for a long period vaguely defined and imperfectly understood; as late as the year 1862 an attorney-general of the United States[5] expressed the conviction that eighty years of practical enjoyment of citizenship, under the Constitution, had

[1] Twiss, Law of Nations, "Peace," pp. 222, 223.
[2] *Ib.*; Story, Conflict of Laws.
[3] Harris, Principia Prima Legum, pp. 42, 44.
[4] United States Naturalization Laws, Rochester, N. Y., 1841.
[5] Bates on Citizenship, p. 3 *et seq.*

not sufficed to teach us either the exact meaning of the word, or the constituent elements of the thing we prize so highly. Recently the Supreme Court of the United States[1] had occasion to consider this title at some length; and it was pointed out that until the passage of a recent amendment, citizenship of the United States had never been authoritatively defined.

The fourteenth amendment to the Constitution of the United States, following the analogy of the civil as well as public law, makes birth within the territory, *and subjection to the jurisdiction* necessary qualifications of citizenship of the United States by birth.[2]

§ 19. In 1846 a case arose in Pennsylvania,[3] in which the meaning of citizen in a certain treaty was considered. It was urged in argument on one side that the common idea that the privilege of voting, which is political purely, makes the citizen, led to error in that case; for no decision has taken *naturalization* as its ground. *Domicile*, and in many instances domicile for commerce, is the leading principle. On the other side it was contended that the word "citizen" had always been used in one sense since the treaty with France of 1778, that it was found in that of 1788, of 1803, for the cession of Louisiana, and in the various treaties with Spain, and Denmark and Mexico with the same meaning; and it was argued that it had always been understood to mean one whose political rights here were perfect. The messages of President Jackson during his administration, and the executive documents always used the word in that sense. In referring to these arguments the learned judge[4] said: "The treaty gave the right of reclamation to citizens of the United States; and we would find it a question not free from dif-

[1] Slaughter-house Cases, 16 Wall. (U. S.) Rep. 36.
[2] See Amendment; also, Rev. Stats. U. S., sect. 1992 *et seq.*
[3] Lestapies *v.* Ingraham, 5 Pa. St. Rep., p. 80.
[4] Gibson, Chief Justice.

ficulty, were we bound to decide it, whether a foreign merchant, domiciliated here for purposes of trade, is such a citizen. . . . It is well settled that a subject or citizen of one country may become a subject or citizen of another, by a change of his domicile, in time of peace, and acquire the commercial character and rights of a native. But is the title to extra-territorial protection a commercial or a political right?"

§ 20. As early as 1814 the Supreme Court of the United States[1] expressed its opinion as follows: "But this national character which a man acquires by residence" [alone?] "may be thrown off at pleasure, by a return to his native country, or even by turning his back on the country in which he has resided, on his way to another. To use the language of Sir W. Scott, it is an adventitious character gained by residence, and which ceases by non-residence. It no longer adheres to the party from the moment he puts himself in motion, *bona fide*, to quit the country *sine animo revertendi*." — 3 *Rob.* 17, 12, "The Indian Chief." "The law of nations," said Marshall, Chief Justice, "is a law founded on the great and immutable principles of equity and natural justice. To draw an inference against all probability, whereby a citizen, for the purpose of confiscating his goods, is clothed, against his inclination, with the character of an enemy, in consequence of an act, which when committed, was innocent in itself, was entirely compatible with his political character as a citizen, and with the political views of his government, would seem to me to subvert those principles. The rule which, for obvious reasons, applies to the merchant, in time of peace or in time of war, the national character of the country in which he resides, cannot, in my opinion, without subverting those principles, apply a hostile character to his trade carried on during peace, so conclusively as to prevent his protecting it by

[1] The Venus, 8 Cranch, 280.

changing that character within a reasonable time after a knowledge of the war."

§ 21. The most recent decisions of international tribunals, as well as expositions of publicists, are in harmony with the views expressed in this opinion. It results that, in all cases where nationality, as the result of domicile merely, is claimed or asserted, there is, on the part of the individual, some period at which *he* may elect whether he will abandon the nationality so acquired and resume the nationality of origin, or acquire a new nationality. This privilege of the individual is called by publicists the right of option, or election (*le droit d'option*).

To determine what this time is, or to define the act or acts by which the intention to make such election is manifested, is not easy; and this constitutes one of the difficulties frequently encountered, which must be determined according to the circumstances of each particular case. The decided cases, however, show that in controversies between a state and an individual, where national status, as the result of domicile, is in question, — the tendency of courts and international tribunals is to give weight to the declarations as well as to the acts of the individual interested.[1]

In a recent case which came before an international tribunal which sat at Washington,[2] it was decided that Barclay, a British subject by birth, but long resident in the United States, where he owned much property of a real and personal character, could not be held to have forfeited the national character of origin by such residence or commorance, unless by *his* election; it was determined by the commissioners that he was entitled, under provisions of the Treaty of

[1] Mitchell *v.* The United States, 21 Wall. (U. S.) Rep. 353 *et seq.*; *Re* Conway, 17 Wisconsin, Rep. 259. Anderson and Thompson's case, cited *supra*.

[2] *In re* Barclay, Mixed Commission on British and American Claims.

Washington, to present his claim as a subject of Her Majesty's government. And the umpire[1] of another international tribunal, which held its sessions at Washington, decided that, within the meaning of the treaty, certain American claimants, who had filed memorials, could not, in view of their denial and disclaimer of renunciation of their nationality of origin, be held, as the result of residence merely in a foreign country, to have forfeited any rights as American citizens. It appeared from evidence submitted by Mexico that there was at the time of the occupation and ownership by claimants of real estate in Mexico, a law of Mexico which conferred Mexican citizenship on the owner and cultivator of lands in the territory of Mexico; and the fact that claimants owned and cultivated lands so situated was not contested. Mexico denied their right to indemnity as American citizens. On this state of facts the commissioner of Mexico,[2] and the commissioner of the United States,[3] disagreed. The question as to the citizenship of the claimants was then referred to the umpire,[4] and he decided that claimants had standing before the commission as American citizens.

§ 22. In another case before the same commission[5] where a forfeiture of original citizenship or nationality was insisted upon, as the result of certain acts of the individual, the umpire, in deciding the question submitted to him, used the following language: —

"The claimant has not lost his nationality by the act of having established his domicile temporarily in Mexico, nor by having acquired real estate there."

To this effect, also, were the decisions of the same commission in a number of cases in which the question as to the

[1] Francis Lieber, LL. B., United States and Mexican Commission, in Anderson and Thompson's case.

[2] Palacios.

[3] Wadsworth. [4] Dr. Francis Lieber. [5] Francis Nolan.

effect of naturalization was considered.[1] In one of these cases[2] it was held that "when the naturalization laws of two states are in dispute, and each claims that its own law decides the case, there will then arise a serious conflict, inasmuch as a state does not recognize the naturalization of its subject in another state as efficient to extinguish the anterior nationality. In these cases, the conflict must be decided by principles of international law; *but if the two states admit that naturalization extinguishes the anterior nationality, then indeed the difficulty is solved.*"

§ 23. What character of persons were embraced in and described by the term, "citizen," within the meaning of the treaty between the United States and Mexico, of July 4, 1868, was fully and learnedly discussed, in argument, by the advocates of the United States and of Mexico respectively.[3] The claim of the advocate of the United States, in favor of a broad and liberal interpretation of this term, was sustained by the distinguished civilian and publicist who was acting as umpire.[4]

After considering the nature and definitions of citizenship, in the light of international law and the authorities, the advocate of the United States concludes: —

"(1.) That every state exercises the power of determining who shall enjoy the right of membership of the political society or body politic of which it consists.

"(2.) That those who are invested by the municipal constitution and laws of a country with this quality or character, and *none others*, are citizens of the state.

"(3.) That nations proceed in their municipal legislation upon the idea that the citizens of other countries have the

[1] Martin, Wesche, Monstery, *et al.*

[2] Martin's.

[3] J. Hubley Ashton; C. Cushing. See particularly argument of Mr. Ashton on "Citizenship and National Protection."

[4] Dr. Francis Lieber.

right to change their nationality and incorporate themselves with new political societies.

"(4) That all nations provide, by their laws, the terms and conditions upon, and in pursuance of, which this change of nationality may be, and is effected.

"(5.) That, except in pursuance of those laws, and upon the terms and conditions so provided, no member of any political society can incorporate himself with a new state and become a citizen or subject of such state.

"(6.) That, until a change of nationality is thus effected, the old relation subsists, unless the individual has done some act which, under the laws of the state of his origin, has the effect of denationalizing him, as is the case under the French law, where a citizen of France assumes public office under a foreign government, or becomes naturalized or domiciled in a foreign country, either of which acts has the effect of depriving him of the character of a citizen of France, although he may not have become a citizen or subject of any other state."

§ 24. Under the authorities, there would seem to be no doubt of the soundness of these general propositions. But the recital contained in the sixth proposition of the advocate of the United States, by way of illustration of one of the modes by which French citizenship may be lost, is misleading, in that it omits an important and controlling qualification. For it is to be observed that forfeiture of French citizenship follows the acceptance of office in a foreign country *only* in cases where such service is "without the permission of the state."[1]

Lafayette, General and Marquis, held a commission in the armies of the United States during an eventful period; and after rendering signal services to America, returned to France,

[1] Phillimore, International Law, Vol. XXI. p. 382; Code Civil, l. i. t. i. ch. ii.; De la Privation des Droits Civils, sect. 17; Sirey, Code Civil, Annotés, Vol. I. p. 67.

without forfeiting his original citizenship; and an accomplished compatriot — General Bernard — served for many years as an engineer officer of the highest rank in the United States Army, but eventually returned to France with Louis Philippe, and became a member of the French Cabinet. But it was never, we believe, contended that either of the distinguished Frenchmen, by the mere fact of rendering services to a foreign state, were decitizenized or denationalized. The permission of the state may be tacit, may be implied; and it may be express. General Simon Bernard had received the permission of his sovereign; but the consent is often implied, and it cannot be contended that failure to obtain consent works forfeiture of native citizenship, — except on motion and after action taken by the sovereign of the state to which the individual belongs by birth or by naturalization.

§ 25. "The national character of any person may be changed by expatriation and naturalization."[1]

"There are some apparent cases of a loss of national character, such, for instance, as the French rule that a Frenchman accepting, without authority from his government, public functions confided to him by a foreign nation, loses the quality of Frenchman (*Code Napoleon*, Art. 17), but these should be rather regarded as a denial of the rights or privileges of national character. In respect of the obligations or subjection of the individual, the national character should be deemed to continue until another is acquired."[2]

§ 26. "The answer to the question, Who is a citizen?" says Aristotle, "is different in different states, and depends on the laws and constitution of each. The whole body of the inhabitants of a country enjoying the protection of its laws, including the young who are still under the legal age, and the very old, who have passed the time of action, and all others under any other species of disability, are, in a certain wide and general

[1] Field, Int. Code, sect. 258, p. 135. [2] *Ib.* note to sect. 258.

sense, citizens. But the full and complete definition of a citizen is confined to those who participate in the governing power, either by themselves or their representatives. This privilege is not attached to mere residence in a place or country, or derived from descent; for the question always recurs, How did the original possessor obtain it? It is a privilege conferred in a legal manner by the act of the state. Sometimes it has been greatly extended by a revolution in the government, as by Cleisthenes, when the Tyrants were expelled from Athens: and in that and similar instances it admits of doubt whether it was rightly or wrongly extended to so many strangers, and persons in a servile condition; but the fact remained, and those on whom power was then conferred retained it. He who is intrusted with this privilege in a democratic government is, more than others, invested with the powers of a citizen. And the number of citizens so invested with a portion of the governing power in a state ought to be sufficient to ensure all the purposes of security and well-being for which society was founded." [1]

A recent English author [2] says: "But Aristotle's opinion, founded on the ancient condition of society, is against the admission of artisans, and even of all freemen who were not above the necessity of manual labor. His argument treats the question of admission to full citizenship, and to a participation in the governing power, as one to be determined by the circumstances of each community, with reference to the good of the whole. The facilities of acquiring knowledge, and the means of elevating the moral character even in the humblest grades of life, in the present day, so different from anything that Aristotle was acquainted with, render his strict limitations as to classes now inapplicable, without, however, affecting the principle so clearly worked out wherever he touches upon the origin of the wisest and best arrangements

[1] Politics, Book III. c. s. 2 and 3.

[2] Tremenheer, On the Franchise, pp. 12, 13.

of political power; namely, that they do not flow from any abstract rights in individuals, but from a just and enlightened sense of expediency in each particular case, having in view the safety of the state, and the best interests of the community."

Burlamaqui [1] points out that the subjects of a state are sometimes called citizens, and that some persons do not make any distinction between the two terms. But it is better, he says, to distinguish them. By "citizen" should be understood all those who share in all the privileges of the association, and who are properly members of the state, either by birth, or in some other manner: all the others are simply inhabitants or commorant sojourners. With respect to women and servants, the title of citizen can apply to them only to the extent to which they enjoy certain rights, in character of members of the family of a citizen, properly so called; and, in general, all this depends upon the laws and particular customs of each state.[2]

Under Aryan government women were not members of the state. [3]

"The words 'subject' and 'citizen' have no special technical signification affixed to them by the code of public law. It is for those who seek to show that they are not used in their primary and natural sense to show affirmatively that they have some more limited meaning. In the prize courts the question of the national character of merchandise is determined by considerations wholly irrespective of the correlative duties of allegiance and protection." [4]

[1] Tome IV. chs. 71, 72.

[2] The opinion of Chief Justice Taney and of a majority of the Supreme Court of the United States in the Dred Scott case was influenced by a consideration of these distinctions. Compare with opinion of the court, and the concurrent opinions, the views of the several justices dissenting, particularly the views of Curtis, J. 19 Howard (U. S.) Rep. pp. 564–633.

[3] Hearn, Aryan Household, p. 351.

[4] Her Majesty's counsel, J. Mandeville Carlisle, Arg. Mixed Commission on British and American Claims. See Report of H. Howard, Her Majesty's Agent, p. 298.

§ 27. The important practical question which presents itself for consideration in all cases of conflict of laws of different states, or in controversies between a state and an individual, wherein citizenship or nationality is contested, is, What is the rule by which to determine or reconcile this contrariety? In discussion of some of the cases, much confusion of ideas has resulted from the failure to consider this question. In nearly all cases the method by which the difficulty must be solved is the same. The solution depends upon certain necessary proofs, which are usually of a two-fold character; first, the declaration and acts of the individual; secondly, the acts and declarations of the state. It may sometimes be impossible to reconcile these; in this event, the acts and declarations of the individual should control and determine the question, provided his acts consist with his declarations. For the principle involved in the doctrine, which is described as the *right of election* (*le droit d'option*) of citizenship or nationality, is the obvious, consistent, and logical consequence and outcome of the broader doctrine, styled the indefeasible right of expatriation. The time in which this right of election is manifested may be material; and while there may be different ways of declaring the intention, *the consent of the individual is always essential;* — in a doubtful case it may be assumed. It was regarded as one of the firmest foundations of Roman liberty that the Roman citizen had the liberty to stay or abandon his citizenship at will. "Haec sunt enim fundamenta firmissima nostrae libertatis, sui quemque juris retenendi et dimittendi esse dominum."[1]

[1] "Oh, how admirable are our laws, and with what godlike wisdom were they established by our ancestors from the very first beginning of the Roman name! especially the law that no one of our people can be a citizen of more than one city (for it is inevitable that dissimilar states must have a great variety in their laws) and that no one can be compelled against his will to change his city, nor against his will to remain a citizen of any city. For these are the firmest foundations of our liberty, that every individual should have it in his own power to retain or abandon his privileges; . . . . but this great teacher of ours is ignorant also of the whole bearings of the law respecting a man's

If this view be correct, — and we believe consideration of leading and authoritative modern cases and authorities will show that it is, — many controversies will be relieved of serious embarrassment. The real difficulty does not usually arise as the result of dissent to either of the general propositions which have been stated, for it has been pointed out, that with singular unanimity modern states agree to them; but the controversy ordinarily begins with a denial of the claim that a particular individual had or had not, at a given time, exercised this right of election. The result of this position, as is apparent, is simply to throw the burden of proof on the claimant; and the importance and relevancy in proof of his acts, declarations, intention and desires will be readily appreciated. What declarations and acts, in the absence of naturalization, will be sufficient to evidence an intention to change citizenship or nationality must depend upon circumstances; and they must be tested by principles of international law, and the laws and practice of the several states.

"At present," says Mr. Field, referring to the extinguishment of allegiance on the part of the individual, "no formal act is required except by municipal law." The fact of renunciation is to be established like any other facts for which there is no prescribed form of proof by any evidence which will convince the judgment. Citing Opinions of United States Attorneys-General, Vol. IX. (Aug. 17, 1857), pp. 63, 64.[1]

§ 28. In this connection it is important to observe that citizenship or nationality, where it does not result as an acci-

change of citizenship; which, O judges, is a thing which is not only clearly laid down in the public laws, but which depends also on the inclination of individuals. For, according to our law, no one can change his city against his will, nor can he be prevented from changing it if he pleases, provided only that he be adopted by that state of which he wishes to become a citizen." — CICERO, *Oration for Balbus.*

[1] International Code, p. 136.

dent of birth, is conferred as a privilege and a benefit on the individual; and it may not be forced upon him.[1] The provisions of the act of Congress of Feb. 10, 1855,[2] are sometimes cited *contra;* but examination of the act, in the light of events which led to its passage, will show that the whole purpose of this act was to confer the privileges of American citizenship upon individuals who, under peculiar circumstances, and through no fault of theirs, might have been held, under existing laws of their own country, to have forfeited their natural citizenship or nationality.[3]

[1] Opinion of Dr. Lieber, *in re* Anderson and Thompson. *In re* Conway, 17 Wisconsin Rep. p. 526.

[2] 10 U. S. Stats. 604; Revised Stats. of the U. S. p. 351, sect. 1993, 1994.

[3] For a proper practical construction of this act, see Consular Regulations of the United States (1874), p. 31, ¶ 115; also opinion of the Secretary of State to the President of the United States, Executive Documents. "Expatriation, Naturalization, and Change of Allegiance, p. 817, Washington, D. C., 1873." Opinions of Attorneys-General of the U. S., Vol. XIII. p. 89.

The second section of the act of Feb. 10, 1855, has been construed by the Supreme Court of the United States; Kelly *v.* Owen, 7 Wall. p. 496.

PART II.

§ 29. Of all changes of national character recognized by the law of nations, the most important and the most far-reaching in its effects is that which results from naturalization. It is often the cause of, or is made the excuse for serious conflicts between states.[1]

Naturalization, under aspect of law and politics, and taken in a narrow sense, is a gratuitous concession, which is accorded as a pure favor to an alien desiring to acquire the character of citizen on compliance with certain conditions prescribed by the sovereign power of the adopting state.[2]

There are two determining causes of a change of national character, — the law of the state of adoption, and the voluntary act of the individual.[3]

§ 30. Naturalization, as we understand it to-day, that is, the concession of the rights of citizenship to an alien, was not known at Rome in the earliest days. Indeed, the privilege of personal laws was prohibited. But there prevailed

[1] Proclamations of the Prince Regent of Great Britain, July 23, 1814, October 26, 1812, January 9, 1813; President Madison's Message to Congress, December 7, 1813; British and Foreign State Papers, 1812–1814, Part II. pp. 1367, 1368, 1356, 1357, 1518, 1579, 1525, 1528, 1529, Department of State, Washington, D. C.; Conflict between Germany and the United States of America; see Foreign Relations of the U. S., 1879, pp. 367, 379; Conflict between Spain and the United States, see Report of Cases of Delgado, Angarica, and Dominguez, before United States and Spanish Claims Commission, under agreement February 12, 1871, Washington, D. C.

[2] Stoicesco, Etude sur la Naturalisation, p. 236.

[3] Calvo, p. 439.

what has been defined as collective naturalization, by virtue of which citizenship was conceded to an entire town or a whole people. Concessions of this character were early made by the laws of Julia and Plautia; after which followed the constitution of Caracalla, which assimilated the free subjects of the empire to Roman citizens;[1] and later, under Justinian, all the free subjects of the Roman Empire obtained the complete rights of citizenship. M. Charles Giraud, says, *à propos* of this, "It will not do to believe that this concession was purely philanthropic benevolence; it was rather a financial combination than a philosophic action."

§ 31. As we shall hereafter see that naturalization, in most of its aspects, belongs to the department of private international law,[2] it is important to consider the significance of this term.

"International law (*jus gentium*)," says M. Foelix, "is the collection of the principles admitted, by civilized and independent nations, to regulate the relations which exist or may arise between themselves, and to determine the conflicts between the laws and different customs which govern them.[3] International law is divided into public law and private law. Public international law (*jus gentium publicum*) governs the relations of nation to nation; in other words, it has for its object the conflicts of public law. Private international law (*jus gentium privatum*) designates the collection of rules according to which conflicts between the private rights of different nations are determined; in other words, private international law is composed of the rules relating to the civil or criminal laws of a state in the territory of a foreign state.[4] The author cited then refers to the fact that questions of the latter character occur frequently today in Europe and in the United States of North America,

[1] Stoicesco, Etude sur la Naturalisation, pp. 113, 119.

[2] *Infra*, p. 50.

[3] Foelix, Droit International Privé, Paris, 1866. [4] *Ib.*

and adds that their number will multiply in proportion to the increase of reciprocal relations between nations. "The Roman civil law has been resorted to for the regulation of international affairs, and is regarded and respected by all nations alike, as containing the soundest and purest code for the adjustment of differences of this description."[1]

§ 32. "International rights are derived either from the common law of nations, or are acquired by treaty. Treaties or the contracts of nations are recognized and enforced by international law; but they no more form part of it than the contracts of private persons form part of the municipal law by which they are enforced. . . . We must take care not to confound those rules which properly belong to the law of nations with those which are founded upon the municipal law of states, or upon their treaties. . . . Treaties are declaratory of international law, so far as they imply or set forth its principles; *but in derogation of it between the contracting powers, so far as their legal rights are varied by their mutual stipulation.*"[2]

It is hardly necessary to say that it is competent for two or more states, under treaty stipulations or agreement, to enter into engagements or covenants by which they may vary *in toto* the practice and process of naturalization; but until this is done the rule of public international law holds, which says that naturalization is, by the common consent or practice of civilized nations, committed in its entirety to the control and jurisdiction of the country of adoption, and that the country of origin has no connection with it, and has nothing whatever to do with it. It is said by the Supreme Court of Louisiana[3] that "in the conflict of laws, where it is doubt-

[1] Harris, Principia Prima Legum, pp. 42, 44.

[2] Wildman, Peace, p. 2.

[3] Porter, J., in Saul *v.* His Creditors, 5 Louisiana Reports (N. S.), pp. 569, 570.

ful which should prevail, the court that decides should prefer the law of its own country to that of the stranger."

A contemporary author[1] cites this case as "the leading American decision on the application of real and personal statutes," but takes exception to some of the propositions laid down by the court. It has been stated by a very industrious American annotator[2] that this case suggested to Judge Story his treatise on the "Conflict of Laws."

Phillimore thinks that the learned essay of Livermore[3] led to the elaborate and popular work of Story. But it is to be observed that the author of the "Contrariety of Laws" was a member of the bar of the Supreme Court of Louisiana, and that his essay was subsequent in date to the decision in Saul *v.* His Creditors, with which he was doubtless familiar. However this may be, Judge Story makes constant reference to the decision, and says in his text that the doctrine of the Louisiana court as to matrimonial domicile is the doctrine of the federal courts.

§ 33. "According to the law of nations, when the national character of a person is to be ascertained, the first question is, In what territory does he reside, and is he resident in that territory for temporary purposes or permanently? If he resides in a given territory permanently, he is regarded as adhering to the nation to which the territory belongs, and to be a member of the political body settled therein."[4]

"Considered from an international point of view, the jurisdiction of a nation must be founded either upon the person or property being within its territory. Considered from a civil point of view, jurisdiction may be founded upon *natural* as well as *local* allegiance; in other words, every independent

[1] Phillmore, Int. Law, Vol. IV. p. 260; see Appendix, I. p. 779.
[2] Geo. W. Paschal, Constitution of U. S., Texas Digest, etc.
[3] The Contrariety of Laws, Philadelphia, 1833.
[4] Twiss, Law of Nations (Peace), 231, 232.

state claims to make laws perpetually binding upon its natural-born subjects wherever they may be. But natural allegiance, or the obligation of perpetual obedience to the government of the country wherein a man may happen to have been born, which he cannot forfeit or cancel, or vary by any change of time or place or circumstance, is the creature of civil law, *and finds no countenance in the law of nations, as it is in direct conflict with the incontestable rule of that law:* "*Extra territorium jus dicenti impune non paretur.*"[1]

We have seen, however, that since the French Revolution, continental nations generally have given up the Roman civil-law doctrine of perpetual allegiance, and have conceded the right of expatriation. (See also opinion of Treitt, advocate of the imperial court and counsel to the English embassy, given to His Excellency, Lord Lyons, ambassador of Her Britannic Majesty at Paris).[2]

"It is," says Treitt, "in fact, a principle inherent in human liberty, a principle of natural right, that a person may leave the soil on which his birth may by chance have thrown him. This principle is admitted by all publicists from Cicero down to our own times."

§ 34. On the 26th of August, 1811, the Emperor Napoleon I. promulgated a decree relative to the naturalization of Frenchmen abroad. Article I. of this decree is as follows: "No Frenchman can be naturalized in a foreign country without our authorization." Commenting upon this unconstitutional edict, Treitt says this decree "does not annul naturalizations acquired abroad without authorization; it inflicts penalties therefor, but allows them to exist. The Frenchman has therefore a new country, to which he has been obliged to take the oath of allegiance. *No one can have two countries. The general interest requires that no one should*

[1] Twiss, Law of Nations (Peace), 231.

[2] Foreign Relations of the United States, 1873, Part II. pp. 1280, 1282.

have two countries. THE COUNTRY OF ADOPTION SUPPLANTS THE MOTHER COUNTRY."

Treitt continues: "For instance, to become naturalized a Swiss, one year's residence and the payment of a few francs are sufficient. It is a great facility given to young Frenchmen who wish to escape the military law. This point merits the attention of French legislators, *but at this moment the law must be taken as it is, and it must be conceded that naturalization abroad releases a Frenchman from his obligations towards France. The decision of the courts only confirms the expatriation; the consequences of expatriation emanate from the laws themselves;* one of these consequences is the exemption from military service. . . . *I regret to see a simple naturalization abroad cancel all the obligations which are due to the mother country.* But questions of law are not solved by the feelings alone; *it is a matter of law as it is, and not as it ought to be.*"

This author then proceeds to indicate how, under the existing law of France, the character of Frenchman is lost.[1]

Stoicesco insists that the acquisition of the character of citizen of France does not any longer result from the establishment of domicile alone; except, perhaps, in the case of a woman, native of France, who by marrying an alien loses her nationality. She may recover her nationality, under Article 19 of the code, if she resides in France.[2] This view is sustained by M. Demolombe;[3] and controverted by M. Delvincourt and by Proudhon.

§ 35. It is said by an author, whose declarations on the subject have long been considered authoritative on the con-

[1] The Code Napoleon provides "that the quality of Frenchman will be lost — first, by naturalization acquired in a foreign country; second, by acceptance without authority of the government of public functions conferred by a foreign government; third, by establishment in a foreign country without purpose of return." See also Sirey, Codes Annotés, pp. 55–67.

[2] Etude sur la Naturalisation, p. 240.

[3] Droit Civil, Liv. I. tit. I. ch. i. No. 172, Tome I. pp. 204 *et suiv.*, ed. 1874.

tinent of Europe as well as in America, that the general rule that laws relating to the state and capacity of persons may operate extra-territorially is subject to the following exceptions: "1. To the right of every independent sovereign state to naturalize foreigners, and to confer upon them the privileges of their acquired domicile." Wheaton's "International Law," Dana's 8th ed., 142 *et seq.*; Pardessus, "Droit Commercial," and Foelix, "Droit International Privé," are cited in support.

Commenting upon the above portion of the text of the author, the editor says: "*Naturalization, in most of its aspects, belongs to the department of* MUNICIPAL LAW, *or* PRIVATE INTERNATIONAL LAW. . . . *Public international law can seldom be concerned in the question of political citizenship acquired by naturalization*, unless, etc. . . . *Every nation claims the right to give the complete character of citizen to an alien, without consulting the wish of the state of his birth. Most nations admit that if a native voluntarily emigrates, and makes a permanent domicile in another country, and receives from that country the full rights of citizenship, the country of his birth cannot enforce claims upon him* ORIGINATING AFTER HIS NATURALIZATION." . . . "Certain jurists have contended that the term *comity* is not sufficiently expressive of the obligation of nations to give effect to foreign laws, when they are not prejudicial to their own rights and interests, and have suggested that the doctrine rests on a deeper foundation, and that it is not so much a matter of comity or courtesy as a matter of paramount moral duty."[1]

"'Now, if it be assumed,' writes Mr. Justice Story, 'that such a moral duty exists, it is clearly one of imperfect obligation, like that of beneficence, humanity, or charity.' . . . A distinction has accordingly been made by the civilians between *personal* statutes, *real* statutes, and *mixed* statutes. *Personal* statutes, according to this classification, are those

[1] Twiss, Law of Nations, *infra*.

portions of the civil law of a nation which have persons principally for their object, and treat only of property as an accessory; such are those which regard birth, legitimacy, freedom, the right of instituting suits, majority, incapacity to contract or to make a will or to sue in proper person, etc.

"With regard to *personal* statutes, they are held to be of general obligation and force everywhere. *Real* statutes, on the other hand, are held to have no extra-territorial force or obligation. With regard to *mixed* statutes, the extent and degree of their operation is one of the most intricate questions of international jurisprudence."

The rule laid down by Foelix, is: "That the personal statute of each individual, the law to which his person is subject, is that of the nation of which he is a member. To justify this assertion, it is necessary to consider the position of the individual at the moment of his birth. The nature of things suggests this: at this moment, the law to which his father and mother are subject, or his mother, if he is born out of wedlock, attaches to him, covers him with its power, and impresses upon him the character of member of the nation of which his legitimate parents, or his natural mother, are a part. The law of this nation is his personal law, from the first moment of his physical existence."[1] Demangeat points out that a more exact statement of the law is that "the first law to which an individual is subject is the law of the nation to which the individual belongs by birth."[2] The same editor adds: "Since the personal statute of each individual is the law of the nation of which he is a member, it becomes necessary to ascertain to what nation the child that comes into the world belongs."[3]

§ 36. "The administration of foreign law by courts of justice under the comity of nations has given rise to an

[1] Translation, Droit International Privé, Vol. I. pp. 53, 54, Paris, ed. 1866.

[2] *Ib.* p. 53, note (*a*); see Field, Int. Code, pp. 132, 133.

[3] *Ib.* p. 54, note (*a*).

extensive department of juridical science, which has been termed private international jurisprudence. This branch of juridical science, which is concerned more especially with the conflict of laws arising out of the relations of civil life, which exist between the citizens of different states, proceeds upon a wise and liberal regard to the mutual convenience and mutual necessities of mankind. The real difficulty is to ascertain what principles in point of public convenience ought to regulate the conduct of nations in respect to one another. The necessity of the general welfare has sanctioned certain exceptions to the rule, 'Statuta suo clauduntur territorio, nec ultra territorium disponunt'; and the civil legislation of one nation may, through the comity of another nation, have the effect given to it beyond the limits of its territory." [1]

"All laws which have for their principal object the regulation of the capacity, state, and condition of persons have been treated by foreign jurists as personal laws." [2]

See also Saul *v.* His Creditors, 17 Martin (*Louisiana*) Reports, 569–596. The opinion in this case of Porter, J., contains an exhaustive and interesting discussion of the distinction made by civilians between *real* and *personal* statutes; and it is deserving of particular attention, in that it is the decision of the Supreme Court of a state in which the civil law prevails, announcing the doctrine of the civil law [3] in respect thereto. As the law under which applicants are admitted to citizenship is a personal law, it is not only important, but it is essential to a correct apprehension of the subject, to keep this fact always in view during any discussion of this question. The results which follow from this distinction between *real* and *personal* laws are material and fundamental.

[1] Twiss, Law of Nations (Peace), pp. 221, 222. London, 1861.

[2] Story, Conflict of Laws, sect. 50.

[3] Story regards the rule laid down by the Supreme Court of Louisiana as the basis of the law and practice of the United States courts.

§ 37. "The title [citizenship, *civitas*] was indelible in the pure law of the Romans, when once acquired," for the sentence of the people could deprive a citizen of life, *but never of the rights of citizenship without his consent.*

"The exercise of all civil rights, both as regards the *jus publicum* and the *jus privatum*, depended on this title. If it were not there, there was no *status*." [1]

"It was a great maxim of the constitutional policy of ancient Rome not to allow her citizenship to be shared with that of another state. A different custom prevailed in Greece and other states; but the Roman citizen who accepted another citizenship became *ipso facto* disfranchised of his former rights." [2]

The rules applicable to *native* citizens are also applicable to *naturalized*.[3]

The language of a distinguished Spanish civilian is: "El derecho internacional reconoce el poder de un estado para naturalizar los subditos o ciudadanos de otro, *pero la naturalizacion no se verifica en virtud del mismo derecho internacional, pero por la naturalizacion.*" (International law recognizes the power (faculty) of a state to naturalize the subjects or citizens of another, *but naturalization is not effected by virtue of said international law, but by the naturalization.*) [4]

"If nationality should become, as it ought, matter of international concern, it would be highly expedient that an arrangement should be made for communicating the names of persons naturalized, or electing between two nationalities to the agents of the states concerned, to be by them transmitted to their governments, so that no dispute as to the fact could afterwards arise." [5]

[1] Ortolan, Generalization of Roman Law. Translation of Pritchard and Nasmith. Butterworth, 1871, p. 573.

[2] Phillimore, International Law, cccxxii.

[3] *Ib.* cccxxii.

[4] Calvo, Derecho Internacional, Vol. I. 238 *et seq.* Paris, 1868.

[5] Cockburn, Nationality. London: Ridgway, 1869, p. 203.

Such is the declaration made by the late Lord Chief Justice of England, after examination made into the subject, with a view of enlightening and advising the Parliament of Great Britain, which was then engaged in framing the laws of England in the matter of naturalization and expatriation.

"El nuevo ciudadano ó subdito es creacion pura y exclusiva de las leyes civiles y políticas del pais que lo adopta y disfrutará unicamente de los derechos, privilegios é inmunidades que aquellas le confieran." (The new citizen or subject is the simple and exclusive creation of the civil and municipal laws of the country which adopts him, and he will enjoy solely the rights, privileges, and immunities which they confer upon him.) [1]

"Para que el privilegio — el domicílio, ó la extraccion — impongan las obligaciones proprias de la ciudadania, es necessario el consentimiento *del individuo*." [2]

§ 38. It is the *consent of the individual*, not of the country of which he is native, that, in conjunction with some act, or by operation of law, works a change of nationality.

"Todo estado ó nacion independiente tiene derecho á conferir el título de ciudadano á un extrangero sin consultar al estado en que hayo nacido. Es regla general admitida por la mayor parte de las naciones, que si un ciudadano de un pais emigra voluntariamente y fija su residencia en otro, del cual recibe los derechos de ciudadania, *el pais en que hayo nacido ha perdido sobre él todos sus derechos*." (Every state or independent nation has a right to confer the title of citizen on a foreigner without consulting the state in which he was born. It is a general rule, admitted by the great majority of nations, that if a citizen of one country voluntarily emigrates and fixes his residence in another, from which he receives the

[1] Calvo, Derecho Internacional, Vol. I. p. 288 *et seq.*

[2] Pando, Elementos del Derecho Internacional, p. 153.

rights of citizenship, *the country in which he was born has lost, in regard to (or over) him, all its rights.*)[1]

In the Revised Code of Italy, which came into operation on the 1st of January, 1866, provision is made for the loss of Italian citizenship; and one of the methods by which this is effected is "*by naturalization in a foreign country.*"

The fundamental and essential idea, according to modern public law, is that *an individual can be a citizen of but one country, and can have but a single nationality at a time.*[2] He ceases to be a citizen of the mother country the moment he is naturalized in another, and whether or not he has been naturalized is a question determined by local law; and from this decision there is no appeal.

A qualified or double nationality is not recognized by the best modern authorities; and the instant it appears what the national character of the individual is, that moment the extent, character, and nature of his privileges and obligations with reference to some state are ascertained; that moment it is known where he must look for protection, and to what country his allegiance is due; that moment it is ascertained which sovereign he serves, by what law his rights are to be enforced, and by what standard his obligations are to be measured.

§ 39. "The so-called law of nations," says a critical writer, "consists of opinions or sentiments current amongst nations generally. These are not laws properly so called. But one supreme government may doubtless *command* another to forbear from a kind of conduct which the law of nations condemns. And, though it is fashioned on law which is law improperly so called, this command is a *law*, in the *proper*

[1] Pando, Elementos del Derecho Internacional, p. 153.

[2] Zouche, De Jure Fec. II. 2, 13; Westlake's Private International Law, p. 21, sect. 22; Calais *v.* Marshfield, 30 Maine Rep. p. 520. See also in this connection, Field's International Code, second ed. pp. 129, 130, note and cases.

signification of the term. Speaking precisely, the command is a rule of positive morality set by a determinate author. For as no supreme government is in a state of subjection to another, the government commanding does not command in its character of political superior."[1]

A contemporary English author[2] seems to take exception to Austin's criticism of the expression, "international law." The following distinction between terms which are often indifferently applied is drawn by a recent writer:[3] —

"The law of nations teaches the rule which ought to be observed: international law is the rule observed."

"What is habitually called international law is a law without a legislature, without courts of its own, without the sanction of assigned penalties. It has grown out of the necessary intercourse of the different sections of civilized mankind. It consists of rules partly incorporated in the statutes of particular nations, and therefore sharing in the authority and sanctions of national law, partly recognized in formal agreements between nations, partly laid down by the great expositors, Grotius, Puffendorf, and their successors, and supported by traditional observance. These rules or conventions are of immense value, and their value tends to increase continually."[4]

M. Laboulaye[5] says: "This law (international) it is said is chimerical; for there is no legislature to promulgate the law, nor any tribunal to apply it. My reply to this is, that objection is superficial and without value. From the moment there are relations (interchanges) among free beings, there is law (right). *Ubi societas, ibi jus.* With respect to law, it exists

[1] Austin, Jurisprudence, student's ed. p. 66; Holland, Elements of Jurisprudence.

[2] Sir Travers Twiss, Law of Nations.

[3] Heron, Jurisprudence, and its Relation to the Social Sciences.

[4] International Morality, by J. Llewelyn Davies, in Fortnightly Review, Aug. 1880.

[5] Preface to Bluntschli's International Law Codified.

very early, if opinion promulgates and applies it. The true legislature of international law is the whole human race."

"International law," says Bluntschli,[1] "is the collection of principles which govern the relations of states among themselves."

§ 40. The constitutional policy and practice of the United States has been set forth, it is believed, with sufficient fulness and prominence in the several acts of Congress, in the opinions of the law-advisers of the Government, and in the judgments and decisions of the various courts of the country which have been already mentioned or cited. From a consideration of these it will appear that the doctrine of the United States corresponds to that of ancient Rome, in this, — that she has *never* consented to allow her citizenship to be shared with any other state. The declaration of this doctrine has always been consistent.

The constitutional policy and practice of Spain, in modern times at least, proves conclusively that while Spain appears to be quite as jealous of her citizenship as ancient Rome or modern America, she nevertheless makes provision in the matters of naturalization and expatriation which corresponds with the doctrines of modern public law.

Says an eminent Spanish civilian, in commenting upon the first article of the constitution of Spain, of June 7, 1869, under the title "Spaniards" (De los Españoles): "Como esta palabra representa la plenitud de derechos civiles, no es mucho que la ley fundamental, que la primera ley del estado, se ocupa en definirla." (As this word represents the completeness of civil rights, it is not singular that the fundamental law, the first law of the state, is employed in defining it.)[2]

The third paragraph of this article describes as Spaniards, "Los extrangeros que hayan obtenido carta de naturaleza."

[1] International Law Codified.

[2] Gutierrez, Códigos sobre el Derecho Civil Español, tomo I. p. 203.

(Foreigners (or aliens) who have obtained letters of naturalization.)[1]

The commentator proceeds to give some details and to suggest particulars. The author then, referring to the causes or acts which entail a forfeiture of Spanish citizenship, says: "La privacion de los derechos civiles procede una veces de la perdida de la nacionalidad, otro es consecuencia de un hecho o de una pena. La calidad de español, segun la constitucion vigente, se adquiere, se conserva y se pierde con arreglo à lo que determinan las leyes. Las causas de ordinario reconocidas para perder dicha calidad, han sido: 1°. *por adquirir naturaleza en pais estranjero.*" (The deprivation of civil rights proceeds at one time from loss of nationality; at another time it is a consequence of an act or penalty. *The quality of Spaniard, according to the constitution now in force, is acquired, is preserved, and is lost agreeably to what the law determines. The causes usually recognized by which said citizenship is lost have been:* 1. *By the acquisition of citizenship in a foreign country.*)[2]

Other distinguished civilians and authors of Spain may be referred to in proof that Spain, by constitutional recognition as well as by legislative enactments, adheres, in its fullest extent, as a matter of policy, and in practice, to the doctrine of modern public law in this regard. From all of which it will appear that she neither consents to nor tolerates interference by any other nation in the matter of naturalization of aliens; nor does she claim to have any right to control or dictate terms to any other nation engaged in naturalizing her native subjects or citizens.[3]

§ 41. It is said that "whoever comes voluntarily into a country subjects himself to the laws of that country, and

[1] Gutierrez, Códigos sobre el Derecho Civil Español, tomo I. pp. 203, 304.

[2] *Ib.* p. 221 *et seq.*

[3] Calvo, Derecho Internacional, 1, p. 288 *et seq.*; Pando, Elementos del Derecho Internacional, 152 *et seq.*; Escriche, "Naturalization," "Naturaleza."

therein to all remedies directed by those laws on his particular engagements." [1] This is undoubtedly correct, as a general proposition. It is, however, qualified by that principle of modern international law which insists that alien friends commorant in foreign territory shall be entitled to and shall receive protection to life, liberty, and property, independent of local custom, usage, or prejudice, that is compatible with the safety of the state. Before this latter exigency all demands must yield,—"Salus reipublicæ suprema lex." This insistance by the state on behalf of the citizen in foreign territory is not based upon selfish or narrow motives, but upon considerations of public policy and principles of international jurisprudence, which it is the interest of all states to maintain. Public policy suggests that the presence of every alien friend in a territory means just so much material wealth or physical skill and industry added to the resources of the state. International law insists upon the adoption of a comity or rule which admits and applies the personal statute, whenever circumstances arise which suggest that it ought to become operative. In cases where international law may not be sufficiently determinate and explicit, it is the practice of modern states to enter into conventions and treaties with a view to indemnity for past injuries and to secure necessary guarantees for the future. And it is a great duty of diplomatic intervention to secure protection to this description of persons.[2]

§ 42. As a general rule, the effect of laws does not extend beyond the limits of territory; and it has been pointed out that the application of foreign laws, under any circumstances, is only the result of considerations of utility and of reciprocal

[1] Twiss, Law of Nations, Peace, pp. 235, 236.

[2] "Territoriality," to use the words of Sir Travers Twiss, "as the basis and limit of community of law, is a theory of comparatively modern date, as compared with nationality or the principle of race. The *lex territorii* is but the *lex loci* written large." Address before the Berne Conference for the reform and codification of the Law of Nations, August, 1880.

understanding between nations. But custom has, in this matter, established certain rules, the first of which has reference to the effects of a personal statute. Personal statutes follow the individual wherever he may be; their force and effect extend over all territories: reciprocally, the personal statutes of a state apply only to its citizens, and do not have any effect upon strangers who may be temporarily in its territory.[1]

It has been said by M. Pardessus, that "the general consent of civilized nations has willed that what concerns the capacity of an individual should be governed by the laws of the country to which he belongs."

Story's principle regarding admission of foreign laws is familiar to the reader.[2]

Lord Westbury's principle as to conferring extra-territorial jurisdiction on courts is stated by Harris.[3] And the same author gives Vice Chancellor Wood's principle regarding the obligation of the law of foreign countries in regard to the property of foreign residents. He also repeats Burlamaqui's principle regarding the origin of international law. The principle regarding proof of law of nations is considered and stated by Vattel.[4]

§ 43. The origin of the right which one nation has to adopt as its own claim, and to demand indemnity from another nation for the injury done to an individual, is that the individual being a member of the body politic ("miembro de su cuerpo social") and a representative *pro tanto* of his nation, the latter receives an injury whenever the person or the property of such individual suffers wrong or injustice; but if the injured person is not its citizen, or is not under her protection, everything that occurs is to the nation *res inter*

[1] Foelix, Droit Int. Privé, p. 60.
[2] Conflict of Laws, ch. i. p. 8.
[3] Principia Prima Legum, p. 89.
[4] Law of Nature and Nations, p. 41.

alios acta, to which the principle of law applies, "Aliis nec nocet nec prodest."[1]

§ 44. The ordinary and usual method by which a change of original or acquired citizenship or nationality is effected, is by naturalization. It is necessary, therefore, after defining naturalization, to indicate the effects and results produced by it.

Naturalization, being an act by which a change of political *status* is effected, under regulation of municipal or national authority, is a proceeding within the exclusive cognizance of the municipal or national tribunal to whose administration it is committed by the supreme authority; and as the validity of the act depends upon construction of municipal or national law, all questions, whether of fact or of law, growing out of the act, are referable to the municipal or national court or tribunal. It is never a question of international concern, and is not determinable by reference to external, international, or public law.

It may be, however, and not infrequently is, the subject of treaty stipulation between powers who are not satisfied with the existent state or condition of the law or practice, either in respect of the terms or the mode by which a change of nationality is effected.

The national character which results from origin continues till legally changed; and the *onus* of proving such change usually rests upon the party alleging it. Naturalization, said the advocate of the United States,[2] is the rule of modern states.

Whether wisely or not, each nation, in the absence of treaty stipulation, reserves to itself the right to dictate the terms

[1] Wesche's Case, Mixed Commission on Mexican and American Claims, Washington, D. C.; Historia, etc., etc., Rodriguez, Mexico, p. 26.

[2] Argument of Thomas J. Durant, *in re* Dominguez, before the American-Spanish Commission (under agreement, February 12, 1871), Washington, D. C.; Cogordan, La Nationalité, p. 103. Paris, 1879.

and to prescribe the formalities upon which the certificates or letters of naturalization will be issued, as well as the individuals to whom they may be issued; and it exercises this right without reference to the country of origin of the individual applicant, or any other country. And no nation which assumes the responsibility of naturalizing aliens makes any concession as to this, except under the solemnity and sanctity of treaty stipulation, and by the employment of express and explicit language in regard thereto.

In its popular, etymological, and legal sense, naturalization signifies the act of adopting a foreigner and clothing him with all the privileges of a native citizen or subject.[1]

§ 45. "It has already been remarked," says Halleck,[2] "that every independent state has, as one of the incidents of its sovereignty, the right of municipal legislation and jurisdiction over all persons within its territory, whether its own subjects or foreigners commorant in the land. With respect to its own subjects this right, it is claimed, includes not only the power to prohibit their egress from its territory, but to recall them from other countries; and with respect to commorant foreigners, not only to regulate their local obligations, but to confer upon them such privileges and immunities as it may deem proper. It may, therefore, change their nationality by what is called naturalization. It is believed that every state in Christendom accords to foreigners, with more or less restrictions, the right of naturalization, and that each has some positive law or mode of its own for naturalizing the native-born subjects of other states, without reference to the consent of the latter for the release or the transfer of the allegiance of such subjects. It seems, therefore, that so far as the practice of nations is concerned, the right of naturalization is univer-

[1] Opinions of the Attorneys-General, Vol. IX. 359; Coke Litt. 199, *a*; 1 Bl. Com. 374; 2 Kent's Commentaries, 64–67.

[2] International Law and Laws of War, 693.

sally claimed and exercised without any regard to the municipal laws of the states whose subjects are so naturalized."[1]

§ 46. While laying down the same doctrine, in language at once positive and conclusive, an eminent publicist[2] says: "But if it is beyond doubt that every independent nation has a right to confer the title of citizen upon a foreigner, it is also true that she can control the loyalty of her own subjects, and she can impose conditions upon or altogether prohibit expatriation. With this view the laws of all nations have fixed certain essential requisites for the complete denationalization of their subjects or citizens, some going to the extent of requiring the assent or consent of the supreme executive power. How, then, can these two rights (or claims) be reconciled? If public law recognizes in each state the power (faculty) to naturalize the subjects or citizens of another, how can it also admit the power (faculty) in the same state to make conditions or to prohibit expatriation altogether? At first sight it appears that these two rules are irreconcilable; nevertheless the contradiction is only apparent. International law recognizes the power (or faculty) in a state to naturalize the subjects or citizens of another, but naturalization does not take place by virtue of said international law, but as a consequence of local legislation; so that the new citizen or subject is the pure and exclusive creation of the civil and political laws of the country of adoption, and he will enjoy solely the rights, privileges, and immunities which they confer. And what has been said of naturalization applies to expatriation, or the breaking of the natural bonds of citizenship, which have

[1] Foelix, Droit International Privé, sects. 27–55; 1 Phillimore on Int. Law, sects. 315 *et seq.*; Cushing, Opinions U. S. Attorneys-General, Vol. VIII. pp. 125 *et seq.*; Don, Derecho Publico, Tome I. cap. xvii.; Riquelme, Derecho Internacional, Tome I. p. 319; Heffter, Droit International, sect. 59; Westlake, Private International Law, sect. 20 *et seq.*; Bello, Derecho Internacional, Part II. cap. v. sect. 1; Woolsey, International Law, p. 104.

[2] Calvo, Derecho Internacional, Vol. I. pp. 295 *et seq.*

their origin and are preserved forever in the shadow of local legislation. The right of expatriation, then, like that of naturalization, is subordinated under the point of view of international law to the general principle that each independent state is sovereign in its own territory, and that its laws are binding upon all persons who are within its jurisdiction, but that they have no force beyond her territory. It clearly follows, then, from the doctrine laid down, that while the subject or citizen remains within the limits and under the jurisdiction of his new country, or in any other state, he will preserve the national character conferred by naturalization; but if he has not acquired the new citizenship, by severing, according to local law, the bonds of the country of his birth, it is evident that the return of the naturalized citizen to his native country will place him again under her jurisdiction, subjecting him to the obligations, duties, and penalties which the laws impose, or have imposed, unless there are stipulations to the contrary in special (or particular) treaties. These principles have been recognized in the jurisprudence of the United States."

But Calvo errs in suggesting that the effects of naturalization are confined to territorial limits or jurisdiction: the doctrine of modern private international law, in respect to naturalization, is founded upon principles that explicitly deny such a claim. And the author is also misleading in the assertion that any such principles "have been recognized in the jurisprudence of the United States," as will clearly appear by reference to the cases and instances cited in this treatise.

It is believed, however, that many cases in which conflicts have heretofore arisen, as well as others which may arise in future, will be relieved of serious embarrassment and much perplexity, when viewed in the light of the leading distinction drawn and the reasoning pursued by this author. If attention is directed to the fact that the conflict between the laws of naturalization and the laws of expatriation is only apparent,

much advance will have been made, both in the avoidance of unnecessary controversies and in the settlement of delicate questions of dignity and prerogative between independent states.

§ 47. "Natural allegiance, or the obligation of perpetual obedience to the government of the country wherein a man may happen to have been born, which he cannot forfeit or cancel, or vary by any change of time or place or circumstance, is the creature of civil law, and finds no countenance in the law of nations, as it is in direct conflict with the incontestable rule of that law: 'Extra territorium jus dicenti impune non paretur.'" [1]

Since the French Revolution, continental nations generally have given up the Roman civil-law doctrine of perpetual allegiance, and have conceded the right of expatriation.[2]

"It is," says Treitt, "in fact, a principle inherent in human liberty, a principle of natural right, that a person may leave the soil on which his birth may by chance have thrown him. This principle is admitted by all publicists, from Cicero down to our own times." [3]

§ 48. "The doctrine of absolute and perpetual allegiance, — the root of the denial of any right of emigration," said Cushing,[4] "is inadmissible in the United States. It was a matter involved in and settled for us by the Revolution, which founded the American Union."

"The natural right of every free person," said Judge Black,[5] "who owes no debt and is not guilty of any crime, to leave the

[1] Twiss, Law of Nations (Peace), 231. See also Riquelme, Derecho Internacional, Tom. I. p. 319; Puffendorf de Officio Hominis et Civis, Lib. II. cap. xviii.

[2] Foreign Relations of the United States, Part II. pp. 1363, 1364. Washington: Government Printing Office, 1873.

[3] *Ib.* pp. 1280, 1282.

[4] Opinions of Att.-Gen. U. S., Vol. VIII. p. 139.

[5] *Ib.* Vol. IX. p. 356.

country of his birth, in good faith and for an honest purpose, — the privilege of throwing off his natural allegiance and substituting another allegiance in its place, — is incontestable. I know that the common law of England denies it, that the judicial decisions of that country are opposed to it; and that some of our courts, misled by British authority, have expressed, though not very decisively, the same opinion. But all this is very far from settling the question. The municipal code of England is not one of the sources from which we derive our knowledge of international law. We take it from natural reason and justice, from writers of known wisdom, and from the practice of civilized nations. All these are opposed to the doctrine of perpetual allegiance. It is too injurious to the general interests of mankind to be tolerated; justice denies that men should either be confined to their native soil or driven away from it against their will."

"Expatriation," said the same authority, "includes not only emigration out of one's native country, but naturalization in the country adopted as a future residence. When we prove the right of a man to expatriate himself, we establish the lawful authority of the country in which he settles to naturalize him if its government pleases. What, then, is naturalization? There is no dispute about the meaning of it. The derivation of the word alone makes it plain. All lexicographers and all jurists define it one way. In its popular, etymological, and legal sense, it signifies the act of adopting a foreigner, and clothing him with all the privileges of a native citizen or subject."

The law of nations explicitly declares that allegiance is not unalienable; and it is now universally conceded that naturalization is an important appendage of the sovereignty and independence of every nation.

§ 49. One of the obvious conclusions which follow from the train of reasoning pursued by the Spanish publicist,

Calvo, *ante*, is that there may be, under view of international law, a distinction, important and material in its effects, between the *personal* rights and the *property* rights of a naturalized citizen, as follows: If, as has been shown, the adopted citizen voluntarily returns to his native country, *animo manendi*, or inherits, purchases, or leaves real property in its territorial limits, he subjects such *property* to the obligations, duties, and penalties which the laws of the country of his birth impose, or have imposed, and he can expect no relief as against these from the country of adoption; and, as to any right or title to *property* in the country of birth, during absence from the territory, or during presence in the territory *sine animo manendi*, the adopted citizen is entitled to the same exemption and to the like protection, at the hands of both the country of origin and the country of adoption, as a native or alien friend would receive under the same circumstances. But in regard to *personal* rights he is entitled to receive from the country of adoption the same measure of protection that is accorded the native citizen of the country of adoption. A majority of the cases which have been the subject of diplomatic negotiation, or have been before the mixed commissions on claims, and have involved a discussion of citizenship, will be relieved of further embarrassment if the above distinction between property rights and personal rights be kept in view.

§ 50. In the absence of treaty stipulations, the personal rights of the naturalized citizen, in the territory of the country of origin, as elsewhere, are inviolable; and in respect of these the country of adoption owes him the protection that it extends to natives; and this obligation to protect continues *until the naturalized citizen has given unquestionable evidence of renunciation of the acquired, and resumption of natural allegiance;* a return to and commorance in his native country, for purposes of business or pleasure alone, is not such evidence.

In respect to property rights in realty within said territory, they remain subject to the municipal law of the country where situated; and the measure of protection which may be claimed as to these is the same as that accorded to native citizens, or alien friends, according to circumstances.

§ 51. It is important, however, to observe that if the country of origin, from whatever motive, fails to give the naturalized citizen the protection of its municipal laws in all matters of property, the obligation rests upon the country of adoption to secure to its new citizen or subject, from the mother country, full reparation and indemnity. And this indemnity is, in practice, usually secured by intervention of diplomatic negotiation, or through the instrumentality of mixed commissions established for this purpose and clothed with the jurisdiction necessary to do justice and equity as between the parties.

In cases of the return of naturalized citizens to the country of origin, the same rule as to the burden of proof, which applies to a renunciation of natural allegiance and the acquisition of a new citizenship by individuals, may be invoked; and the *onus* of proving renunciation of the acquired nationality, and the resumption of the natural or original allegiance, usually rests upon the party alleging it.

From time to time cases have arisen where the country of origin has denied the claims of the country of adoption in respect to the exercise of protection over the adopted citizen. One of the historic and familiar cases was that of Koszta, a Hungarian, and one of the refugees of 1848–1849. This was an extreme but interesting case. Koszta came to the United States, declared his intention to become a naturalized citizen, then went to Smyrna, where he was seized by some persons in the pay of the Austrian consulate; he was by them taken out into the harbor and thrown overboard; he was picked up

by an Austrian man-of-war, and held as prisoner; the United States consul remonstrated with the commander, and on the latter's refusal to surrender Koszta, the captain of a United States ship-of-war demanded his release, and threatened, if necessary, to resort to force. The matter was finally compromised, and Koszta was released and shipped to the United States, the Austrians formally reserving the empty right of proceeding against him if he should return to Turkey. Of this case it has been said with some positiveness by a late writer that the United States carried the doctrine of acquired nationality beyond reasonable bounds; the reasoning of Mr. Marcy, in support of the claim of his government, has been criticised as "remarkable for its boldness"; and it is pointed out that in his reasoning "the effect of domicile in respect of civil consequences is confounded with its effect as to political consequences, which is altogether inadmissible."[1]

§ 52. The same author suggests that in the subsequent case of Simon Tousig, an Austrian, who voluntarily returned to Austria after commorance in the United States, Mr. Marcy did not assert this doctrine. But the facts in the two cases were entirely unlike, and the questions which arose in Koszta's case did not come into controversy in the latter case.

Lord Westbury had already insisted that the learned editor of the "Conflict of Laws" had been led into confusion by failing to draw a distinction between the social and the political status, between the *patria* and the *domicilium*. Under provisions of treaties between the United States and several foreign states, the declaration of the intention to become a citizen has in itself no effect on the nationality of the individual; he remains an alien till final admission to citizenship.[2] But when

[1] Nationality, Lord Chief Justice Cockburn. London: Ridgway, 1869, p. 122.

[2] See Treaties between United States and Austria, Baden, Bavaria, Hesse, Mexico, North Germany, Sweden and Norway, Würtemberg, and Ecuador.

once the alien has been admitted to citizenship, the American doctrine in its relation to him has always been consistent and firm; and the United States extends to the naturalized citizen, as well against interference by the country of origin, as by any other foreign power, protection as full and complete as that which it extends to the native citizen under similar circumstances.

Of the case of Koszta, the late Lord Chief Justice Cockburn said, "Both parties were in the wrong. The Austrians had no pretence of right for seizing Koszta on Turkish territory. On the other hand, the American authorities had no right to claim Koszta as an American subject [?] (citizen), as he had not actually become naturalized. The party really entitled to complain was the Ottoman government, which refused the application of the Austrians for leave to arrest Koszta, and protested against the outrage offered to their authority, but whose protest does not appear to have been heeded."

To the remonstrance of the Austrian government, as to a violation by the officers of the United States of the neutrality of Turkish territory, Mr. Marcy replied: "If the Ottoman Porte had been able to protect, against Austrian intrusion, the integrity of its territory, by preventing the capture of a person covered by the North American flag, the United States would not have had occasion to interpose their authority for the protection of this person." Reviewing this case, and referring particularly to the position assumed by the Austrian cabinet and by Baron de Cussy, who adopted the view of Austria, and to the response of the American secretary, Calvo[1] seems to justify the position taken by Mr. Marcy, and to regard his answer to Austria, as well as his explanation to the sultan, as satisfactory. The proposition that Koszta at Smyrna was not an Austrian subject was sustained by the American Secretary of State on another ground. Mr. Marcy insisted that

[1] Le Droit International, Paris, 1870, p. 453.

"the right to protect persons having a [national] *domicile*, though not native [born] or naturalized citizens, rests on the firm foundation of justice; and the claim to be protected is earned by considerations which the protecting power is not at liberty to disregard."[1]

By a decree of the Emperor of Austria, Austrian subjects leaving the dominions of the emperor without permission of the magistrate, and a release of Austrian citizenship, and with an intention never to return, become "unlawful emigrants," and lose all their civil rights at home.[2]

§ 53. Alluding to the case of Carl Schurz (formerly Secretary of the Interior), Calvo[3] says: "Another example, not less interesting, of the power which naturalization by states confers upon their new subjects or citizens, is that of M. Carl Schurz, native of Prussia, condemned to death in 1848, together with Professor Kinkel, by a German tribunal, for having taken part in the revolutionary movements. M. Schurz managed to escape the pursuit of justice, and took refuge in the United States, where he was naturalized, became a member of Congress from the State of Ohio, later general of militia, and finally was appointed minister to Madrid. Before proceeding to occupy this post, M. Schurz returned to Germany, by the help of a disguise, and attempted to bring about the escape of his accomplice, Professor Kinkel; it was then that the cabinet at Washington concluded to appoint him its representative at Berlin, to negotiate with Prussia a treaty on questions relating to the right of naturalization. The Prussian government consented to forget the antecedents of M. Schurz, to recognize his new nationality, and to admit him

[1] The Secretary of State to Mr. Hulseman, Minister P. P. and Ex. from Austria to the United States, Cong. Doc. 33d Congress, 1 Sess. H. R. Ex., Doc. No. 9.

[2] American State Papers, Vol. XLIV. p. 987.

[3] Le Droit International, Paris, 1870, p. 453.

without difficulty in the character of diplomatic representative of the United States. The selection of a former Prussian subject as minister of the United States at Berlin had an origin which it is important to recall." [1]

§ 54. In the case of Zeiter, a native of France, but a naturalized citizen of the United States, which came before the civil tribunal of the first instance in the arrondissement of Wissembourg, Lower Rhine, France, in 1860, the attempt was made to hold Zeiter to the performance of military duty in the French army, on the ground that, as a native of France, he was liable to such duty. But when the certificate of naturalization, forwarded by the United States consul at Paris, was registered at Wissembourg, and then produced in court, the judges decided "that Michael Zeiter, by naturalization in a foreign country, had lost his character of Frenchman," and released him.[2]

In 1860 a case occurred at Havana of Sabino de Liano, a native of Spain, naturalized in the United States, being arrested as a conscript. In reply to the representations of the United States consul, the captain-general informed him that by a royal decree of the 17th November, 1852, "the foreigner obtaining naturalization in Spain, as well as the Spaniard obtaining it within the territory of another power, without the knowledge and authorization of his respective government, shall not exempt himself from the obligations which

[1] The statement of Carl Schurz's case given by Calvo is full of errors. The facts were as follows: —

Schurz was involved in revolutionary war in Southern Germany, in 1849, but he was not captured, and was never sentenced. He escaped into Switzerland, returned to Prussia in 1850, secretly, to effect the escape of Professor Kinkel from prison, and succeeded. He went to France and England in 1850–1851, and emigrated to the United States in 1852. He was appointed minister to Spain in 1861, and was subsequently Major-General of Volunteers in the Union army. He was never appointed minister to Berlin.

[2] Foreign Relations of the United States, Part II. 1873. Washington: Government Printing Office.

were consequent to his primitive nationality, although the subject of Spain may, in other respects, lose the quality of Spaniard, conformably to what is prescribed in Art. 1 of the constitution of the monarchy." But to this pretension the United States would not yield, and the answer to this communication from the representative of Spain was, in substance, a repetition of the doctrine that the United States makes no difference between naturalized and native citizens, and that she does not admit any qualification in respect to them in the matter of protection. A shield of one figure and the same texture covers naturalized and native. Eventually the proceedings taken against Mr. Liano were suspended, and a bond which he had entered into to provide a substitute cancelled by the governor-general.[1]

It is not many years since John Mitchel, a native of Ireland, the Irish patriot, or agitator, as he has been differently characterized, according as the description was by sympathizer or antagonist, became naturalized in the United States. The history of this case shows that Mitchel, having been convicted in the courts of Great Britain of a political offence, was condemned to penal servitude in Australia, and that before his time was completed he made his escape and reached the United States, where he was naturalized. After many years' residence in the United States subsequent to naturalization, Mitchel offered himself, or was announced, as a candidate from an Irish borough to fill a vacancy in the British House of Commons. This occurred at a time of some political agitation, particularly in Ireland and Canada; and however fictitious the character or however exaggerated the proportions of this agitation may have been, many circumstances combined to give this ardent Irishman a following, and he was elected. The contingency which would arise, should Mitchel

[1] Papers relating to Foreign Relations of the United States on Naturalization and Expatriation, Vol. II. p. 1303. Government Printing Office: Washington, 1873.

present himself or his credentials to the House of Commons, made it of moment to the government of Great Britain to multiply the grounds of his ineligibility; and although at that date the nation still held to the doctrine of perpetual allegiance, and an eminent publicist of Doctors' Commons had declared upon authority cited[1] that, under international law, banishment itself did not destroy citizenship, it was deemed important to show the American citizenship of this claimant to a seat in one of the Houses of the Parliament of Great Britain. Search was instituted in the courts of the United States; and the record of Mitchel's naturalization having been discovered, a certified copy of the same was forwarded to London by the minister of Great Britain, Sir Edward Thornton. Mitchel died, however, before the time arrived for the presentation of himself or his credentials to the House of Commons. Had he survived and his right to a seat been insisted upon, some strange and perplexing, though not necessary, questions might have been brought forward for consideration; but it is probable that a near and ready solution would have been reached; for it would have been competent, under the law and custom of Parliament, for the House of Commons to have adjudged Mitchel disabled and incapable to sit as a member, by reason of his previous conviction.[2]

§ 55. "Naturalization is usually called a change of nationality. The naturalized person is supposed, for the purposes of protection and allegiance at least, to be incorporated with the naturalizing country. This proposition is, generally speaking, sound; but it must admit of one qualification similar to that already mentioned with respect to the domiciled subject, if the naturalized person should have been the original subject of a country which did not allow him to shake off

[1] 1 Phillimore, Commentaries on International Law, 380. The references to Phillimore are to the London edition, 1871.

[2] Blackstone, Commentaries, Vol. I. p. 162, and note by Christian.

his allegiance (*exuere patriam*).[1] The qualification to which reference is here made is contained in the expression *jus avocandi*, which is defined to be a right which every state has of recalling its citizens from foreign countries, especially for the purpose of performing military services to their own country."[2] "Great difficulty, however," says the same author, "necessarily arises in the enforcement of this right. No foreign nation is bound to publish, much less enforce, such a decree of revocation." And it is further said that the *jus avocandi*, already spoken of, could not be legally denied to the country of origin by the adopting or naturalizing country, though the enforcement of the right could not be claimed. And it is insisted, on the authority of Sir Lionel Jenkins, that banishment itself does not destroy the original tie of allegiance.[3] The conflicts which have occurred on this subject of allegiance between the country of origin and the naturalizing country, in cases where the former has declined to admit the exercise of the right of expatriation in subject or citizen, have seldom been pressed to the point of war. An historic exception, however, may be found in the war of 1812, between Great Britain and the United States, which was precipitated by the resistance of the United States government to the claim of Great Britain to a right of visitation and search of American vessels on the high seas. "No foreign state," says Phillimore (p. 377), "can legally be invaded for the purpose of forcibly taking away subjects commorant there. The high seas, however, are not subject to the jurisdiction of any state; and a question therefore arises whether the state, seeking its recalled subjects, can search for them in the vessels of other nations met with on the high seas. This question, answered in the affirmative by Great Britain, and in the negative by the United States of North America, has led to very serious quarrels between the two nations, — quarrels which it may be safely predicted will not arise again. For I cannot think that it would be now con-

[1] 1 Phillimore, Internat. Law, p. 380. [2] *Ib.* p. 377. [3] *Ib.* p. 380.

tended that the claim of Great Britain was founded upon international law. In my opinion it was not."[1]

§ 56. The validity and efficacy of a judgment admitting a person to citizenship are not impaired by an inaccurate statement in its recitals; they constitute no part of the judgment.

Accordingly, where the record of naturalization of an applicant for citizenship of the United States was perfect, but inaccurately recited that the applicant had resided within the United States for three years preceding his arrival at the age of twenty-one years, no deception being intended, the applicant being entitled to be admitted on other grounds, and these facts appearing on an application for renaturalization, it was held that there was no occasion for further proceedings, and the application was denied.[2]

[1] The editor of Dana's Wheaton, 8th ed., p. 175, note, pointed out that "the subject of the impressment of seamen had been confused by the questions which have been discussed in connection with it. . . . In the discussions that arose out of the case of The Trent, neither of the parties to the correspondence, and no writer on the subject, pretended that Mason and Slidell could be removed as citizens, rebels, or criminals. A right to take them out, as distinct from the arrest of The Trent, as a prize proceeding, was not claimed by the United States government, and their release was placed on that ground."— PHILLIMORE, *Internat. Law*, p. 380.

It is a part of the secret history of The Trent affair, current in Washington, that when Benjamin F. Butler presented to William H. Seward, Secretary of State, the opinion of Caleb Cushing, indorsed by the former, to the effect that the United States would be justified in holding Mason and Slidell, the secretary said: "I have no doubt you, gentlemen, are right in your law; *but we are going to give up Mason and Slidell.*"

See Communication (Dec. 26, 1861), from Mr. Seward, Secretary of State, to Lord Lyons, advising him of the release of Mason and Slidell. Diplomatic Correspondence United States, Washington, D. C., Dec. 26, 1861. Also Neutrality of Britain, Bernard, pp. 201–213.

See Lawrence's Visitation and Search, p. 13 *et seq.* Also, Lawrence's Wheaton, pp. 217, 378, 797, 807, 939.

The Hon. Wm. Beach Lawrence said, when referring to this opinion, only a few months since, that as to this, he entertained the views expressed by Caleb Cushing. See, also, a Discussion of the Trent Affair, in Appendix to Lawrence's Wheaton's Int. Law.

[2] Field, J., *in re* Frank McCoppin, 5 Sawyer's C. C. R., p. 630.

"Every nation claims the right to give the complete character of a citizen to an alien, without consulting the wish of the state of his birth. Most nations admit that if a native voluntarily emigrates, and makes a permanent domicile in another country, and receives from that country the full rights of citizenship, the country of his birth cannot enforce claims upon him originating after his naturalization. It is the English doctrine, however, that the obligation of allegiance is for life. Yet Dr. Twiss says of the English doctrine that it is the creature of municipal law, and finds no countenance in the law of nations, as it is in direct conflict with the incontestable rule of that law.[1] How far nations that do not hold this extreme doctrine may go in enforcing obligations originating before naturalization is by no means settled in the practice of nations." [2]

The method of determining a conflict growing out of naturalization has been pointed out in an adjudicated case before an international tribunal which sat in Washington some years since.[3]

To deny the validity of a letter or certificate of naturalization on a question of citizenship (except for fraud in the party or want of power in the tribunal) is to deny the validity of the act of a sovereign power issuing the letter or certificate; and this no state will permit, either at the hands of an individual or of another state. The letter or certificate issued to an individual by a state constitutes an unimpeachable patent of his character as citizen, and to attack it is to attack not the individual or his acts, or the acts of the judicial, executive, or legislative body that granted it, but the sovereign power itself.

The act of denial by one state of the validity of a letter of

[1] Law of Nations, i. 231.

[2] Dana's Wheaton's Int. Law, 8th ed., 1866, p. 143, note, bottom pagination.

[3] Cited *supra*, § 22.

certificate of naturalization issued and presented by another state may be *casus belli*.

§ 57. The question as to the effect and value of a certificate of naturalization came up for consideration before the umpire of the American and Spanish Commission,[1] in the case of Delgado, where the arbitrators had disagreed in relation to Delgado's nationality.[2] The umpire decided: "That the claimant (Delgado) has been naturalized an American citizen according to the laws of the United States; that the judge who ordered him to be admitted a citizen of the United States was, as it has been decided in many cases by the Supreme Court of the United States, the competent authority to decide if the claimant had sufficiently complied with the law which prescribed a continued residence of five years in the United States before having a right to obtain the naturalization."

In this case the advocate of Spain had contended that it appeared, from proofs submitted by the defence, that the claimant, Delgado, was absent from the territory of the United States, and in the territory of Spain, once or twice between the beginning of his five years of residence in the United States and the issuance of his certificate of naturalization; and, therefore, it must be held that he had not complied with the requirement of the law of the United States in respect to residence. In a subsequent case (Fernando Dominguez *v.* Spain), the same question was presented to the umpire[3] who had succeeded M. Bartholdi. In sustaining the

[1] Bartholdi, Envoy Extraordinary and Minister Plenipotentiary from France to the United States.

[2] The agreement of February 11, 1871, between Spain and the United States, contained a clause to this effect: "Nevertheless, in any case heard by the arbitrators, the Spanish government may traverse the allegation of American citizenship, and thereupon competent and sufficient proof thereof will be required."

[3] Baron Blanc, Envoy Extraordinary and Minister Plenipotentiary from Italy.

position of the United States, and adhering to the decision of his predecessor, Baron Blanc expressed himself as follows: "Finally, neither the authorities on public law nor the agreements between Spain and the United States furnish any unquestioned and controlling definition of what constitutes in fact a legal residence with presumable *animus manendi*, and when absence intervenes with presumable *animus revertendi*, such as would justify or empower the umpire to overrule by force of treaties or of the law of nations the construction placed by a court of competent jurisdiction upon a municipal law as to the required residence in the United States for the next continued term of five years preceding the admission to American citizenship. Therefore the construction thus given, however broad it may be deemed, must be followed so long as it is unimpeached or unreversed by an American tribunal of superior jurisdiction. The tribunals of the United States are the sole interpreters of the laws of the country, and it is not the privilege of the umpire to review their declarations as to the requirements of these laws."

§ 58. When this decision of the umpire was filed, the arbitrator on the part of Spain [1] entered a formal protest to the above extract from the decision, in the following language: "It would be a breach of the proprieties that govern the relations between the arbitrators in a commission like this one and the umpire, for the undersigned to attempt an *argument* on any point that may be embraced or conveyed in a judgment of the latter; he will, therefore, confine himself to making the following statements: It is the belief of the undersigned that the convention in virtue whereof this tribunal deliberates, grants to Spain, with all its logical and necessary consequences, the right to review the adjudications of courts of the United States in the matter of granting certificates of naturalization, and that such certificates, whilst

[1] Marquis de Potestad-Fornari.

they may be held as valid for every purpose in the United States, are not, from the mere fact of their existence, conclusive upon Spain. It is the belief of the undersigned that the above-mentioned right and privilege *constitutes one of the bases* of the convention of February, 1871, *in accordance with which* all claims are to be considered. Every judgment given within the bases established by the convention must be beyond question or criticism. But none of the bases themselves can be set aside by the members of this commission."

Says Vattel,[1] "It is not permitted to interpret what has no need of interpretation. When an act is conceived in clear and precise terms, where the sense is manifest, and leads to nothing absurd, there can be no reason to refuse the sense which the treaty naturally presents. To go elsewhere in search of conjectures, in order to restrain or extinguish it, is to endeavor to elude it." And the author adds, "If this dangerous method be once admitted there is no act which it will not render useless. Let the brightest light shine on all the parts of the piece, let it be expressed in terms the most clear and determinate, and all this shall be of no use, if it be allowed to search for foreign reasons in order to maintain what cannot be found in the sense it naturally presents."

§ 59. In the case of Portuondo *v.* Spain, in which the decision of the umpire was rendered subsequent to the filing of the protest of the arbitrator of Spain, the umpire held: "That as to the traversed allegation of American citizenship of the deceased, competent and sufficient proof thereof, as required by the agreement of February 12, 1871, is given by his certificate of naturalization; such certificate not being proved or charged to have been procured by fraud or issued in violation of public law, treaties, or natural justice. Such grounds of impeachment, upon which any certificate of naturalization may be declared altogether void, not being found

[1] Book 2, ch. xvii. sect. 263.

in this case, the umpire called upon to resolve such conflict about the allegiance of the deceased must, following previous adjudications by umpires of this commission, and in the absence of any treaty between Spain and the United States restricting the power of the United States to grant naturalization in accordance with the municipal law as interpreted by the municipal courts, give full force to the naturalization of the deceased even against Spain.

"That the allegation that the deceased had lost or forfeited his right of American citizenship by abandonment or renunciation of such citizenship is not sustained by the evidence. No positive proof has been offered to exclude the intention of the deceased to return to the United States, whose nationality he openly and continually claimed, where he had sent his son, and to which country he had manifestly made preparation to go himself for definite settlement, when he was arrested and shot. No positive proof has been offered of any individual act of the deceased implying the renunciation of his American citizenship acknowledged by the Spanish authorities, which renunciation the said authorities declared should, at some proper time, be ordered as a condition of his free sojourn in Cuba, and no evidence that his continued sojourn there is not to be accounted for by the simple omission of the authorities to enforce such contingent condition."

§ 60. A peculiar case, and one of much interest, which recently arose in California, deserves mention here. A recital of some details is necessary to a proper understanding and appreciation of the merits of the controversy which grew out of it. Many years ago Robert d'Estimauville, then a mere youth, came with his widowed mother to the United States, where mother and son established themselves permanently. In November, 1849, the son was naturalized in the city of New York, under the law for those who arrive under

twenty-one years of age.[1] The mother was domiciled in the United States from the time of arrival until her death, which occurred in San Francisco. The son has been domiciled in the United States since his arrival. The mother was married twice after domiciliation in the United States to citizens of the United States, — the first time in 1845 or 1846, when the son was still a minor; the second time in 1854, at which date the son had reached majority.[2] The son was naturalized under the name of Robert d'Estimauville, and thereafter enlisted in the volunteer service of the United States, and served through the war between the United States and Mexico. From the date of naturalization he acted as a citizen of the United States, and exercised the privilege of suffrage; and his title to exercise the full and complete rights of citizenship was never questioned until quite recently, when, during an exciting political canvass in California, the local registrar refused to register him on the local register, in default of his producing his naturalization papers. With this demand he was unable to comply, for the reason that his certificate of naturalization had been burned in 1850; and though many efforts were made on his behalf to secure another copy, the record of his naturalization in New York could not be obtained. He then went to a judge of a court of record in San Francisco, applied to be renaturalized under the law admitting minors after three years' residence, and offered one witness who knew him since he was fourteen years old. As he could not furnish two living witnesses to prove his record during minority, the judge refused to admit him under that law. In the meanwhile the applicant had changed his name, and called himself Robert Desty. Under this name he was elected to the Legislature of California; but his election was contested on the ground that he was not qualified, in that he was not a citizen of the United States or a citizen of the State

[1] Revised Statutes, U. S. p. 381, sect. 2167.

[2] *Ib.* p. 351, sect. 1994. See also *ib.* p. 381, sects. 2167, 2172.

of California. The denial of his citizenship shifted the burden of proof of citizenship upon the applicant; and though he was unable to produce a certificate of his naturalization as a citizen of the United States, for the reason already stated, it seems that there was ample proof of the identity of the individual who was known at one time as Robert d'Estimauville, and at another as Robert Desty, as well as of the permanent character of his residence in the United States; and there was not wanting evidence sufficient to establish the fact of citizenship, *aliunde* the certificate of naturalization. When, however, Desty's case was under consideration, party contests ran high, partisans were excited, and the legislature of California was almost equally divided between the two controlling parties. Under these circumstances it seems that considerations suggested by political expediency, rather than by law or reason, prevailed; and Desty was not allowed to take his seat in the legislature.

By this action of one branch of the legislature, great injustice was done to the individual interested, who was deprived of an honorable office; but a greater wrong was perpetrated when a scant majority of the members of the Senate of California decided to neutralize the declared will of a responsible constituency, on a pretext or plea that had no substantial foundation in law or in fact.[1] As author and editor, Mr. Desty has rendered valuable services to the profession;[2] and it would be remarkable if he had many peers in knowledge

[1] A recent English historian, in referring to Wilkes's contest with the Parliament of Great Britain, says: "The main object of his life had long ere that been attained. He left prison fully resolved not to desist until he had established the principle that the choice of the people was never to be set aside in deference to monarch or minister, and that the representatives of the nation were to be elected at the polling-booth, and not inside the House of Commons." — TREVELYAN, *Early History of Charles James Fox.*

[2] Federal Citations, Procedure of the Federal Courts, Federal Constitution, California Constitution, California Citations, Shipping and Admiralty, Commerce, Navigation, etc.

of the laws of his adopted country and adopted State, in a body which so ungraciously closed the door against him. It may be that California would have been spared some legislation which is not at all creditable, had Mr. Desty been a member of the legislature to which the suffrages of the people called him. It seems to have been forgotten, or purposely kept out of sight by a majority of the legislature, that renunciation and acquisition of citizenship are facts which may be proven or established like any other facts.[1] In the case of an individual claiming to be a citizen by naturalization, the certificate or letter of naturalization is the usual and orderly proof which is offered, but it is not exclusive. If the letter or certificate is lost, and the record cannot be discovered, secondary evidence to establish citizenship would be admissible. To use the words of the attorney-general, in the connection above cited, "any evidence which will convince the judgment" ought to be deemed sufficient. But independent and irrespective of naturalization, Desty, it seems clear, had acquired a national domicile in the United States, and had for many years exercised civil and political rights.

§ 61. The late Lord Chief Justice of England concluded his discussion of nationality with this language: —

"The following propositions as to the effect of naturalization, in the view of other nations than our own, may be stated as evolved from the laws which have been set forth and the discussions which have been detailed: —

"(1.) That naturalization, as occurring in other countries, and as distinguished from the incomplete and inefficacious form of it known in this, has the effect — at all events where the preliminary conditions, if any, by which the party to be naturalized could denationalize himself and divest himself of his former allegiance, have been fulfilled — of conferring to

[1] See Opinions of U. S. Attorneys-General, Vol. IX. pp. 63, 64 (August 17, 1857); see also Field's Int. Code, p. 136, note.

all intents and purposes a new nationality, and at the same time of destroying the old; of placing the party naturalized in the position of a natural-born subject or citizen in relation to the state which adopts him, and at the same time of dissolving the ties which bound him to the parent state and freeing him from all obligations of allegiance or duty to its sovereign or government.

"(2.) That nothing short of actual naturalization, carried out by such solemn and formal act as the law of the particular country may require, will have this effect. Domicile, residence preliminary to naturalization, declaration of intention, with renunciation of former allegiance or rights, will not suffice to give the character of citizen or subject of the country of adoption, which can be acquired only by the act of naturalization itself.

"(3.) That the effect of naturalization is prospective only, and has no retroactive operation. Therefore, if a subject, on expatriating himself, leaves public duties unfulfilled, the nonperformance of which renders him liable to legal consequences, or by the act of emigration itself commits an offence against the law of the country he abandons, naturalization will afford him no protection, if found within the territory of the latter, and called upon to answer before the law.

"(4.) On the other hand, naturalization will entitle him to immunity, though found again on the soil of his native country, against any future claims made on him as its citizen or subject, unless he returned to it with the intention of abandoning the country of naturalization; and such abandonment by the law of the latter has the effect of destroying the character and status of naturalized subject."[1]

Recent legislation of Great Britain, in respect of naturaliza-

[1] Cockburn, Nationality, pp. 135, 136.

The same authority states the British law as to the effect of naturalization in the British dominions as follows (pp. 114, 115, 116):—

"By the law of every other country, naturalization, if valid at all, carries with it a new nationality, and invests the party naturalized, not only with the

tion, has been based upon a substantial recognition of the truth and soundness of the above propositions.

§ 62. In the Pradel case, which came before the late Mixed Commission on American and Mexican Claims, the question of the conclusiveness of a letter or certificate of naturalization, and the question of the admissions of the constituted authorities of Mexico (the defendant) as to the nationality of the claimant, were passed upon by the umpire on a disagreement by the respective arbitrators.

In delivering his opinion in the Pradel case, the umpire[1] used the following language: —

"But circumstantial evidence is also brought to show that he (Pradel) took out his papers of naturalization in Columbia, S. C., in 1834, and that at a certain period of his residence in Mexico he was in possession of what was believed to be a certificate of naturalization; . . . but in a subsequent note, dated February 24, 1861, in which Señor

status of a subject, but also with the rights, political and civil (barring in some respects the higher political rights), which attach to that status, including the full extent of protection to which a subject can be entitled in return for the allegiance he owes to the state. In this country, on the contrary, since 1851, the government, with a view to prevent claims for protection being made abroad by persons naturalized in Great Britain, has taken care, by the terms of the grant, to limit the effect of naturalization to the dominions of the Crown. . . . Thus restricted, it is plain that the effect of naturalization in Great Britain is only to remove the legal disabilities of the alien, and to place him as to certain minor political rights, and as to civil rights, on the same footing as the natural subject; and, further, that the oath of allegiance taken by him amounts to no more than a promise of that allegiance which every alien while residing in the realm is bound to render, and must be taken to carry with it the implied reservation that it is to operate no longer than while the party remains within the Queen's dominions. When abroad he is no longer a subject. On his return to his own country his nationality of origin, so far as this country is concerned, would revive, and in case of war between the two countries he might legally bear arms against Her Majesty without incurring, legally or morally, the guilt of treason.

[1] Right Hon. Sir Edward Thornton, Envoy Extraordinary and Minister Plenipotentiary from Great Britain to the United States of America.

Zarco (the Mexican Minister for Foreign Affairs) informs Mr. Weller (the American Minister) that the documents relative to the claim had been sent to the Treasury Department, he speaks of the claimant as 'the American citizen, Juan de dios Pradel.' It is impossible, therefore, to escape the conclusion that Señor Zarco, in the mean time, examined the proofs exhibited by the claimant and had satisfied himself that Pradel was entitled to citizenship of the United States.

"The umpire, in his own experience, has never found that foreign ministers are prone to admit such rights, unless they are fully satisfied of their validity, especially where circumstances have assimilated those who aspire to them to the citizens of the foreign country in which they reside; for in almost all such cases the admission of these rights originates irritating correspondence and discussion between the governments concerned, which it is the interest and desire of foreign ministers to avoid as far as possible. The umpire thinks he would do injustice to the intelligence and honesty of the Mexican authorities and of the ministers of the United States in Mexico, if he did not believe that it was only after a full examination of the proofs exhibited by Pradel that they had determined upon acknowledging his rights to American citizenship. . . . The umpire is, therefore, forced to the conclusion that Pradel, at the time of the origin of the claims in question, was a citizen of the United States." [1]

§ 63. Recent leading American cases decide that neither a state of the Union nor the United States can question the validity and finality of a judgment of naturalization.[2]

[1] Opinion of Umpire *in re* Pradel *v.* Mexico, American-Mexican Commission, Papers in Department of State, Washington, D. C.

[2] U. S. *v.* The Acorn, 2 Abbott's U. S. Rep. 443; The People, etc. *v.* McGown, 77 Illinois Rep. 644; see also, *In re* Peter Coleman, Cir. Ct. U. S. District of New York, 15 Blatchford's Rep. p. 406; Christern's case, Superior Court, New York City.

European jurists take the same view of the conclusive effect of judgments and decrees of naturalization.

The "Indépendence Belge," of January 10, 1880, contains a report of a case decided at Charleroi, in Belgium, on the 3d of that month, known as the affair Bauffremont-Bibesco.

The court was composed of Liboulle, first president, with Judges Niffle and Croquet.

In 1861 the lady, the Princess de Chimay, who was defendant in the case, a Belgian subject by birth, married at Chimay, Prince Bauffremont, a French subject.

In 1874 the lady obtained a "séparation de corps," from the prince, by a judgment of a court in Paris, which also decreed to her the custody of their two children.

In May, 1875, the Duchy of Saxe-Altenbourg naturalized the lady.

In October, 1875, the lady contracted at Berlin another marriage with Prince Bibesco.

In August, 1876, and February, 1879, the court in Paris, which had granted to the lady the "séparation de corps," modified the former decree in relation to the children, and declared their custody should no longer remain with the lady, but that they should be educated at the Convent of the Sacred Heart in Paris, until they came of age. To enforce this decree the court in Paris ordered that the children should be delivered by the lady — the Princess de Chimay — to the Prince de Bauffremont, their father, under penalty of damages for each day's delay in compliance of five hundred francs for the first month, and one thousand francs in succeeding months; which damages had amounted to nine hundred thousand francs.

By a settlement which had been effected among the members of the family of the Prince de Chimay, father of the lady, she had become entitled to 355,317.50 francs from the succession of her mother, which sum was in the hands of Prince de Chimay, her father, where it was seized in order to make

it liable to the judgments of August, 1876, and February, 1877, of the court in Paris, above mentioned.

In this way the case came before the court of Charleroi. The Prince Bibesco, the second husband, appeared to assist and authorize his wife, which he could only do, as was admitted on all sides, on the condition that his marriage with the lady at Berlin should be held to be valid, and this validity was denied by the Prince Bauffremont on the ground of the first marriage at Chimay, in 1861.

The court of Charleroi held that the decrees of the court in Paris, of August, 1876, and February, 1877, were not binding upon the lady, because at the time they were rendered she was not an inhabitant of France, and had ceased to be a French subject by her naturalization in Saxe-Altenbourg. With regard to this naturalization, we quote the language of the court: —

"Attendu que la naturalisation conférée à la défenderesse par le duché de Saxe-Altenbourg est un acte de l'autorité souveraine de ce pays; que selon les principes du droit public aucun pouvoir en dehors de cette autorité ne peut ni en discuter la validité, ni en modifier les effets; que le duché de Saxe-Altenbourg était seul compétent pour décider si la défenderesse réunissait les conditions pour que sa demande de naturalisation lui fût octroyée;

"Attendu que si cette autorité souveraine n'a pas exigé à cette fin le consentement de son mari, c'est qu'elle a jugé que cette formalité n'était pas nécessaire;

"Attendu que le pouvoir judiciaire, pas plus en France qu'ailleurs, n'a qualité pour contrôler cette procédure émanant de l'autorité d'un pays étranger; que l'opinion contraire, admettant la révision des actes d'un autre gouvernement, consacrerait un système qui violerait évidemment tous les principes du droit des gens;

"Attendu que cet acte de naturalisation, qui est à l'abri de toute contestation, a changé la nationalité de la défende-

resse et a en conséquence modifié son statut personnel, qui de français, qu'il était, est devenu allemand ;

" Attendu qu'une femme aliène sa nationalité par la naturalisation comme par son mariage ; que son état et sa capacité sont alors régis par les lois de sa nouvelle patrie qui la suivent partout où elle se trouve ; que cette règle, formant la base de tout édifice social, est essentiellement d'ordre public ;

. . . . . .

" Attendu que si la jurisprudence et la doctrine ont parfois diversement interprété la valeur à accorder à un acte de naturalisation, c'est parceque les principes généraux du droit international, fondés sur l'indépendance de chaque nation, ont été mal appréciés ;

" Que c'est en effet faire une fausse application de ces principes de n'admettre les droits personnels découlant de la naturalisation que pour autant qu'ils n'aient rien de contraire aux lois de la nationalité d'origine."

The court proceeds to decide in favor of the lady, affirming the conclusive character of her naturalization, as not being subject to review by any other power, and the validity of her second marriage.

§ 64. The two controlling questions which were submitted to the court of Paris, before which court collateral proceedings were also instituted, were : first, whether the naturalization, obtained in Saxe-Altenbourg by the Princess of Bauffremont, without the authorization of her husband or of the (local) court (in France) could be held to be valid in French law ; and, secondly, whether a woman separated (*séparée de corps*) could validly contract a second marriage in a foreign state.

These questions were elaborately discussed contemporaneously with the judicial litigation by several European writers of eminence. Two of these writers,[1] after full discussion,

[1] M. de Folleville, brochure intitulée, "De la Naturalisation en Pays Étranger des Femmes Séparées de Corps," paruc en 1876 ; M. de Holtzendorf.

answered the first question in the affirmative, thus sustaining the view which has been with great unanimity upheld by the authorities, and which had been previously adopted by the court of Charleroi in the language we have quoted.

With the second question, which is also of general interest, we have no present concern.

In concluding his opinion, M. de Holtzendorf says: "And, moreover, naturalization is not one of the judicial acts for which the consent of the husband is made necessary [by the law of France]; those acts are within the domain of private law, whereas, naturalization is essentially in that of public law."

Another contemporaneous writer, however,[1] answered the first question in the negative. But this latter view finds little support in modern international jurisprudence or practice.

In considering the case of Bauffremont-Bibesco,[2] it was said that "public or international law differs in its essence from municipal, because it is not, like the latter, imposed by any sovereign power, but is the agreement among equals that their mutual intercourse shall be governed by universally admitted principles of justice, good faith, and benevolence. This does not touch matters of internal administration.

"The naturalization of aliens is a practice adopted by all civilized nations in modern times. The act by which the alien is made to become as a native is one of a purely domestic character; under what terms and conditions it shall be consummated is a question of internal administration. No two nations agree exactly in the manner in which aliens may

"L'Affaire Bauffremont," Journal de Droit International Privé, Tome III. pp. 5 *et suiv.*, livraison de janvier-fevrier, 1876.

[1] M. Labbé, sur "L'Affaire Bauffremont," Journal de Droit International Privé, année 1875, Tome II. pp. 499 *et suiv.*, livraison des mois de novembre et décembre.

[2] Reported in L'Indépendence Belge, Jan. 10, 1880; Journal du Palais, 1876, p. 981.

be naturalized. Each in its sovereign capacity prescribes rules of admission, and as in such internal matter there is among nations a perfect equality, no one can dictate to the other a special mode of procedure; no one can rightly complain of the methods pursued by another, and consequently no one can deny to any man the quality of naturalization which another nation has conferred upon him. The naturalization, therefore, accorded to an inhabitant by any one nation must be respected by every other nation. Such is the result of the equality which exists among the sovereignties of the civilized world.

"These just and simple principles were recognized by the Belgian court of Charleroi, in the case of Bauffremont. One of the questions presented for consideration in that cause was whether the wife of a citizen of France could be naturalized in a foreign country, without the consent and authorization of her husband, so as to make her naturalization binding in all other countries than the one in which she was naturalized. It was contended that no such extra-territorial effect could be given to the act of naturalization, for want of the marital authorization; but the court held that the authorities of the naturalizing country were alone competent to decide what preliminary conditions were requisite for conferring the quality of naturalization. The court declared that the naturalization conferred upon the wife was an act of sovereign authority; that, according to the principles of public law, no power outside of that authority had the right either to discuss its validity or to modify its effects; that the authority which conferred naturalization was alone competent to decide whether the wife came under the conditions upon which naturalization could be accorded to her, and as that sovereign authority had not required the consent of the husband, it was because that formality was not necessary. The court declared, moreover, that no judicial power in any country had the right to exercise control over a proceeding which ema-

nated from the authority of a foreign country, and that a contrary opinion, which should admit the power to revise the acts of another government, would sanction a system violating every principle of international law."[1]

§ 65. The question of domicile, meaning national domicile,[2] has heretofore entered prominently into all discussions on the subject of citizenship or nationality, and the difficulty of defining domicile has embarrassed inquiry in this connection.[3] In the light of recent legislation in respect to naturalization by the nations, the discussion as to what does or does not constitute domicile must be of less frequent occurrence and importance. But it will remain, in the absence of naturalization, the controlling question wherever citizenship or nationality is claimed or denied on the ground of domiciliation alone.

It has been pointed out how much of the confusion has been introduced. But until advised as to what is the distinction between the *social* and the *political* status, between the *patria* and the *domicilium*, there is danger that confusion will remain. As these latter terms are derived from Roman law, we must look to that system of jurisprudence, and to the exposition of civilians, for their definition and signification. "The title" [citizenship, *civitas*] says Ortolan,[4] "was indelible in the pure law of the Romans, when once acquired; for the sentence of the people could deprive a citizen of life, but never of the rights of citizenship without his consent. The

[1] T. J. Durant, advocate of the United States, *arg. in re* Buzzi *v.* Spain, before the United States and Spanish Commission. See also brief and argument in same of J. D. McPherson, advocate of Spain, *arg. contra.*

[2] The more the discussions as to what constitutes national domicile are considered, the more obvious will appear the need of a correct apprehension and definition of this term.

[3] American State Papers, Vol. XLIV. pp. 996, 998.

[4] Generalization of Roman Law. Translation of Pritchard and Nasmith. Butterworths: London, 1871, pp. 573 *et seq.*

exercise of all civil rights, both as regards the *jus publicum* and the *jus privatum*, depended on this title. If it were not there, there was no *status*. . . . The domicile (*domicilium*) is simply, in a legal sense, the residence of every person, — the locality where he is supposed to be, in the eye of the law, for certain applications of the law, whether he is corporeally to be found there or not. It is to Roman legislation that we are indebted for the following description of the condition which constitutes the domicile: 'Ubi quis larem rerumque et fortunarum suarum summam constituit, unde non discessurus, si nihil avocet; unde cum profectus est peregrinari videtur; quod si rediit, peregrinari jam destitit.' The domicile gives to persons not the qualification of *civis*, but that of *incola*, in the town where they are established. It is closely connected with the obligation to undertake public duties, magistracies, etc. . . . In Roman law the question of domicile was immediately connected with that of local citizenship. . . . There are, therefore, these three points to be distinguished: first, Rome, the common country (*patria*); second, the local city, where a man was *civis*, *municeps;* and third, the place where he had fixed his domicile, the legal habitation, where he was *incola*."

§ 66. It is not admitted "that the domicile is *the place* where a person has his principal establishment; the domicile is not *the place*, it is *at the place*, as our civil code plainly says."[1]

Further on it is added: "The domicile, in its simple and essential meaning, is, 'the legal seat, the judicial seat of a person for the exercise or for the application of certain rights.' The derivation of the word '*domicilium*' is sufficient to show the force of this explanation, as exact as it is simple."

"But why," says the publicist cited, "should the question be asked, whether a man belonged, as citizen, to one town or

[1] Ortolan, Generalization of Roman Law, 596, note.

another? It was, in the first place, on account of the public offices, and the municipal duties to which a man was always liable to be called in his own city, independently of those duties required of him at the place of his domicile, — municipal duties which recall to mind the miserable condition into which the *curiales* and the *decurions*, the principal inhabitants of the city, had fallen during the last period of the empire. It was, in the second place, because the constitution of Caracalla, granting equality of rights to all the inhabitants, did not grant it to all territories. We have seen that it was only under Justinian that the difference as to the soil was obliterated. In fact it was necessary to ascertain the domicile in order to determine who was liable to the burdens and obligations of each separate municipality to undertake the functions of magistrate; and, in many cases, it was the domicile and not the residence of the defendant which determined the place of litigation."

§ 67. "Generally," it is said,[1] "the question of domicile is difficult to determine, and it is sometimes connected with or surrounded by circumstances that are transcendent and incalculable. The only fixed rule, or, better said, the only controlling rule which can be adduced is the intention of the party." This author gives Phillimore's definition as follows: "Domicile corresponds nearly to the signification of our word 'home,' and when a person has two residences the phrase where 'he has made his home' indicates which is his domicile." But he says, "It is considered that the North American Judge Rush best defined domicile when he said that it was 'a residence at a particular place, accompanied with positive or presumptive proof of continuing it an unlimited time.'"[2]

[1] Calvo, Derecho Internacional, Vol. XI. pp. 94–96.

[2] Guier *v.* O'Daniel, 1 Binn. 349. "This," says Boyd, "explains what constitutes a domicile perhaps better than it can otherwise be expressed, but it is not strictly a definition. The actual fact of residence makes it probable the party is domiciled there, but on the other hand, a person may be domiciled in

"It is important," says another author,[1] "to distinguish between domicile and residence: there might be domicile without residence, or residence without domicile. Residence is preserved by the act, domicile by the intention." A Spanish publicist, in referring to domicile, describes it as "a certain kind or character of establishment, or a certain number of years of continuous residence, from which is inferred the intention to remain forever." He adds, in the same connection, "The consent of the individual is necessary, in order that the privilege (*el domicilio ó la extraccion*) may impose the obligations appropriate to, or which attach to citizenship."[2]

"As a rule, ancient authors only speak of a change of *domicile*, while they remain silent as to a change of *nationality;* it thus happened that different provinces of the same state were governed by laws or customs by no means uniform, so

a country he never visits." (Wheaton's International Law, recent edition.) Another author observes: "There can be no doubt that this is the *kind* of residence which is essential to domicile, but the conception itself may be, perhaps, more accurately explained as *the relations of an individual to a particular state, which arises from his residence within its limits as a member of its community.*" (Foote, Private International Law.) Dicey defines a person's home, or domicile, as "that place or country either (1) in which he, in fact, resides with the intention of residence (*animus manendi*); or (2) in which, having so resided, he continues actually to reside, though no longer retaining the intention of residence (*animus manendi*); or (3) with regard to which, having so resided there, he retains the intention of residence (*animus manendi*), though he, in fact, no longer resides there." (*Law of Domicile.*) See, also, Dr. Wharton on Domicile, cited in Washington Law Reporter, Vol. VII. p. 487 *et seq.* The Central Law Journal, St. Louis, Mo. (Jan. 21, 1881), collects American and English cases concerning the circumstances under which a change of domicile is considered to have been made by a person *sui juris.* As to change of domicile of husband and wife, see Southern Law Journal (Montgomery, Ala.), December, 1880. For a discussion on Domicile, as to married women, infants, wards, and corporations, see Central Law Journal, St. Louis, Mo. (Nov. 26, 1880). Also in connection with general subject, Washington Law Reporter, Feb. 3, 1881; Albany Law Journal, Feb. 1, 1881.

[1] Ortolan, Generalization of Roman Law. Translation of Pritchard and Nasmith. London, 1871, p. 599.

[2] Pando, Elementos del Derecho Internacional. Madrid, 1852, p. 152.

that the simple change of domicile placed the individual under the dominion of another law. This state of things does not exist any longer in France; but it continues in some states which we have mentioned."[1]

§ 68. It is sometimes said that whether domicile has or has not been obtained is purely a question of fact. But this declaration is incorrect and misleading; for domicile is a question of fact and law,[2] and — as has been well pointed out by Mr. Jacobs in a learned essay in which the subject is discussed and leading cases are reviewed — "there is a sentimental element in domicile which must be regarded."[3]

§ 69. An American citizen, having dwelt for many years in Marseilles, died, leaving an estate which the court at Marseilles decided must be regulated by the French law, since, although he had never obtained an authorization to establish his domicile in France, he had resided there for so long a time, it was held that he had there a domicile *de facto*. This decision was reversed by the Supreme Court of France.[4] To the same effect is a decision in the jurisprudence of Spain.[5]

§ 70. In this connection the late Lord Chief Justice Cockburn said:[6] "'Domicile,' which in legal phraseology is neither more nor less than a name for home, and the establishing of which may be said to be settling in a given locality with a present intention of permanently abiding there, has been sug-

[1] Foelix, Droit Int. Privé, Liv. I. p. 57, note 1, ed. 1866; Sirey, Codes Civils Annotés, Vol. I. pp. 89, 96; *Ib.* Supplement, pp. 16 *quart.*, 16 *quinq.*, 47.

[2] Phillimore, Int. Law, Vol. IV. p.

[3] Requisites of a National Domicile: American Law Review, January, 1879. Washington Law Reporter, Vol. VII. pp. 457 and 487. See, also, Dicey on Domicile.

[4] Recueil Général des Lois et des Arrêts, année 1869. Paris, 1re partie, pp. 138 *et seq.*

[5] Reportoria de la Jurisprudencia, Civile Española, por Pantoja; Appendix No. 5, p. 124, word Español; *Ib.* Appendix No. 1, p. 98.

[6] Nationality, Ridgway. London, 1869.

gested by some writers as sufficient to constitute a person a citizen of the country in which it is established, and we have seen that in some countries the being domiciled for a certain period gives the right of citizenship. But this position is altogether inadmissible. Jurists have, for convenience in determining a man's personal status or capacity, or in administering his effects, or in matters of testamentary disposition, looked to domicile as determining by what law a man's rights and liabilities should be ascertained. But it is a very different thing to make domicile determine the question of nationality. Indeed, it may be doubted whether jurists have not gone too far in giving weight to the fact of domicile, even in matters of personal property. In a recent case in the House of Lords,[1] Lord Cranworth and Lord Kingsdown held that, even for testamentary purposes, in order to lose a domicile of origin, and to acquire a new one, a man must intend to change his nationality as well as his abode, or to use a phrase adopted by Lord Cranworth, 'quatenus in illo exuere patriam!'"

The learned author gives as a further reason for not permitting domicile of itself to confer nationality, that "it has the effect of excluding the exercise of that judgment which ought always to be exercised by the proper state or authority as to whether a person applying to be naturalized is, with reference to character and other circumstances, one who ought to be admitted to the status of a subject."

§ 71. It is submitted that frequently the conflict as to what is in fact the citizenship of a particular individual, when it depends upon domicile, arises from a confusion of ideas in respect of the true signification of the terms "domicile," in reference to nationality, and "residence," and in giving to the one or the other a too restricted or a too limited application.

The great difficulty in determining national domicile arises

[1] Morehouse *v.* Lord, 10 H. of L. Cas. 272.

as a consequence of the presence of what has been happily called the "sentimental element." [1]

In some of the cases, particular stress is laid upon the intention of the party. But it is impossible to ascertain what the intention is without having regard to the "sentimental element."

While an individual can have but *one* domicile, he may have many residences: [2] the residence may be constructive; and a familiar instance in the United States is afforded in the cases of citizens of the several states holding public office at the national capital, who, though actually resident there, are constructively resident or in fact domiciled in their respective states; their domicile is in a particular state, to which they return or may return to exercise the elective franchise.

"The word 'reside' is used in two senses, — the one constructive, technical, legal; the other denoting the personal actual habitation of individuals." [3]

§ 72. "A person cannot have more than one domicile." And the general rule is that "if one has a domicile, he retains it until he acquires another." [4]

[1] The Requisites of a National Domicile, Amer. Law Rev., January, 1879.

[2] Foelix, Droit Int. Privé, Paris, 1866, pp. 56, 57; Dupuy *v.* Wurtz, 53 N. Y. 556. See *ib.*, as to evidence of intent to change.

"For the purpose of succession every person must have a domicile, and but one. . . . The question is, in all cases, a question of fact, to be determined by the particular circumstances of each case." *Ib.* [It will be seen, *infra*, that this is not literally correct.]

"The act of residence does not alone constitute the domicile of a party, but it is the fact of residence coupled with the intention of remaining permanently which constitutes it. . . . The question of domicile is one of great nicety, which must be decided on the facts in each case, in the absence of the formal declaration." — 30 *La. An. Rep.* p. 502.

See review of the law of residence and domicile, in Crawford *v.* Wilson, 4 Barb. (N. Y.) 504; also Thorndike *v.* City of Boston, 1 Met. 242; Kilmer *v.* Bennett, 3 *ib.* 199; Harbaugh *v.* Cicott, 3 Mich. 241; Trimble's Case, 33 Md. 468.

[3] Naar, Suffrage and Elections, pp. 87 *et seq.*; authorities cited.

[4] Parsons, Rights of a Citizen, pp. 643, 645. Chief Justice Cockburn

It is assumed here that the author quoted has reference to *national* domicile, which, as the writer insists, is the only qualification which correctly explains the full significance of this term; while, at the same time, it serves to distinguish domicile from mere residence or commorance in an alien country for purposes of pleasure or for commercial enterprise.[1]

A person may apparently have two domiciles at the same time; but whenever circumstances arise which render the existence of two domiciles inconsistent, he must elect and determine between them. And cases will be found in which, without an overt act or declaration on the part of the individual, it will be impossible to ascertain what the intention is.

Some Roman jurists have indeed maintained that a man may be without any domicile at all, as, for example, when he has definitely abandoned his old domicile, and is travelling in search of a new abode; but we do not think this view finds any support under international law. The general rule is as above stated. It is sometimes said that when a domicile different from that of birth has been acquired and is abandoned, the domicile of birth reverts the moment the other is given up.[2] But cases which come under this rule are exceptional.

If an individual, who has apparently acquired citizenship by domicile in an alien state, puts himself *in itinere* to return to his native country, he is already deemed to have assumed his native character.[3]

(Nationality) says, "It is quite possible for a person to have two domiciles." Support for this position may be found in the works of some of the civilians and in authorities; but the later English and American authorities hold that there is in fact but *one national* domicile at a time: the other habitations may be residences. It is sometimes suggested that there may be a domicile for *commercial purposes*, as distinct from a domicile of *nationality*.

[1] See Field's International Code, second ed. pp. 129, 130.

[2] Encyclopædia Britannica, art. Domicile, p. 351; Haldane & Eckford, Law Reports, 8 Equity, p. 631.

[3] The St. Lawrence, 1 Gallison, 467; The Francis, *Ib.* 614.

Some of the cases — if not by expression, at least by necessary implication — seem to warrant the conclusion that a distinction may very well be drawn between the acts necessary to effect a change of nationality in the cases where the conflict is between a nationality of origin and a nationality by domicile in a foreign country, and in a conflict between a nationality by domicile acquired in one or other foreign countries: and it must be obvious that the burden of proof on the part of an individual who claims that he has abandoned his *native* country must be clearer and more satisfactory than would or should be required in a controversy arising under a claim in which each nationality was foreign. Many cases will be found where the facts will suggest this distinction. The native domicile easily reverts; not so the alien or acquired domicile.

"The supposition that a man can have two domiciles," says Chief Justice Shaw, "would lead to the absurdest consequences. If he had two domiciles within the limits of distant sovereign states, in case of war, what would be an act of imperative duty to one would make him a traitor to the other." [1] It is laid down, "that all the controversy upon the point of change of *national domicile* must ultimately come to Lord Kingsdown's rule: the party must intend to put off one nationality and put on another." [2]

§ 73. In the case of Barclay *v.* United States,[3] the claimant, a native British subject, had resided many years in the United States, and had acquired considerable estates. The counsel for the United States, R. S. Hale, assisted by E. Rockwood Hoar, insisted that, being domiciled within the United States, he was not within the provisions of the treaty a British subject.

[1] Abingdon *v.* North Bridgewater, 23 Pick. pp. 170, 177.

[2] White *v.* Brown, 1 Wall., Jr., U. S. Rep. p. 217.

[3] Mixed Commission on British and American Claims, under treaty of Washington, May 8, 1871.

But Her Britannic Majesty's counsel, J. Mandeville Carlisle, would not concede that the residence of claimant in the State of Georgia could be called a domicile. Other grounds were suggested in argument for and against; but the decision, on demurrer, of two commissioners was in favor of the British nationality of claimant. On the facts in this case there would seem to be no room to doubt the correctness of this decision; and the language and expressions in which the decision was announced indicate that the commissioners had not failed to draw the distinction between domicile and residence, or the commorance of an alien for purposes of trade or pleasure in the territory of a foreign country.

"It has been said that these rules of law are applicable to *naturalized* as well as *native* citizens. But there is a class which cannot be, strictly speaking, included under either of these denominations, namely, the class of those who have ceased to reside in their native country, and have taken up a permanent abode (*domicilium sine animo revertendi*) in another. These are domiciled inhabitants; but they have not put on a new citizenship through some formal mode enjoined by the law of the new country. They are *de facto*, though not *de jure*, citizens of the country of their domicile."[1] It was to a large class of persons answering this description (Americans permanently resident in Europe) that President Grant, in his last message to Congress (December 5, 1876), invited the attention of that body, and suggested the propriety of some legislation in respect thereto.

"Naturalized foreigners are in a very different position from merely *commorant* strangers."[2]

§ 74. Cases have arisen where citizenship by naturalization has been denied by the country of origin as against the country of adoption, and it has been urged that such citizenship

[1] Phillimore, Int. Law, Vol. I. 378.
[2] Phillimore, Int. Law, Vol. I. 379.

is qualified, and that it cannot avail against the country of origin. But this position has rarely been insisted upon to the point of actual conflict; and we have shown from the authorities that in practice, except in the case of the voluntary return of the naturalized citizen to the country of birth, *animo manendi*, it is waived by the nations. The serious inconvenience resulting from the maintenance of any such doctrine at this day must be apparent. "*A qualified citizen*" is a strange anomaly, and involves a misapplication and abuse of language; such an one would be a political Frankenstein, clothed in the form and with the features of a member of the society into which he is introduced, but without the essential faculties and attributes which constitute an active, intelligent organism. An individual cannot be at one and the same time a citizen of two states;[1] and as a general proposition an individual can have only one allegiance.[2] As protection and allegiance are correlative terms, and involve reciprocity, it may sometimes aid in determining to whom allegiance is due, if it can be ascertained under whose protection an individual actually lives and exercises prerogative rights. He must be held to be a citizen of that state, upon whom rests, until forfeiture by some act of the individual, the obligation to protect these prerogative rights, — whether they be rights of property or rights of person.

§ 75. On the question of the *singleness of citizenship* (*nationality*), the weight of authority sustains the doctrine laid down by Zouche; and this is in harmony with that of Rome after the constitution of Caracalla, which found expression in the declaration of the Latin citizen, "Roma communis nostra patria est."[3]

[1] See Field's International Code, second ed. pp. 129, 130.

[2] 1 Phillimore, 378.

[3] Cicero, Oration for Balbus; Zouche, De Jure Feciali, 2. s. ii., xiii.; Bluntschli, International Law Codified, sect. 394; Foelix, Droit International Privé, Paris, 1866, 4th ed., par Demangeat, 56, 57, 60, 62, 81; Twiss, Law

Hefter maintains the contrary doctrine, but his proposition will be found to be unsustained by any modern authority or practice.

The fact is, any doctrine which recognizes a double citizenship or double nationality attempts to perpetuate a political hybrid, which is as abnormal and monstrous as its prototype in the natural world; and the expression even will disappear as soon as that wise and judicious system which Savigny almost created becomes universal. The basis of this system is the principle which insists that there should be a harmony rather than a conflict of laws. The contrary principle, which seeks to perpetuate a conflict of laws, is a relic of barbarism, and is fast disappearing from view.

The first proposition which the late Chief Justice Cockburn laid down in his conclusion, after a full review of the whole subject, was expressed in the following language: "Under a sound system of international law such a thing as a double nationality should not be suffered to exist."

"According to our civil law, no one can be a citizen of two cities at the same time; a man cannot be a citizen of this city who has dedicated himself to another city."[1]

§ 76. A different custom prevailed in Greece and in other states; but the Roman citizen who accepted another citizen-

of Nations (Peace), 231, 232; Treitt, Foreign Relations of the United States, 1873, Part II. pp. 1280, 1282; Calvo, Derecho Internacional, Vol. I. p. 288 *et seq.*; Pando, Elementos del Derecho Internacional, p. 153; Westlake, Private International Law, p. 20. Guthrie translates the expression, *fæciali jure*, "ceremonial law." But he adds, in a note: "I don't know that we have a proper English term for this law. The powers of the College of the Fæciales came the nearest of anything we have in England to those of the earl marshal, and some branches of it still remain with the College of Heralds. Their institution, however, as appears by this and other parts of our author, was far from being only ceremonial; for they were the judge of the sense of treaties, of the justice of peace and war; and they were amongst the oldest orders in Rome, being instituted by Numa Pompilius." — *Translation of Cicero, De Officiis.*

[1] Cicero, Oration for Balbus, Translation of Yonge.

ship became *ipso facto* disfranchised of his former rights. The constitutional policy and practice of the United States of America in respect of citizenship is often in harmony with that of Rome. Indeed, the frequent recurrence of analogies in which the policies of these states in respect of nationality are identical, seems to justify the belief that Rome was the exemplar which was followed, consciously or unconsciously, by the authors of the American Constitution as well as by the statesmen of the American republic. It will be conceded that in statecraft the Romans were most proficient. It was not in this field alone, however, that they were masters. "In the science of jurisprudence," says Dr. Whewell,[1] "the Romans were really great discoverers; or rather it was they who made the subject a science, who gave it the precision of a science, the generality of a science, the method of a science."

An expression once made use of by an attorney-general of the United States[2] is sometimes cited in support of the proposition that an individual may be clothed with a double nationality or citizenship at one and the same time.[3] The conclusion of the attorney-general, in the language cited, finds no support either in modern public law or in municipal law. It may not be said in any correct sense that, in the case under consideration, the son had "two nationalities." As long as he remained a minor, the son followed the nationality or citizenship (original or acquired) of the father.[4] The maxim "Partus sequitur patrem" applies. During minority the son was *sub potestate parentis*. The nationality or citizenship of the father was the nationality or citizenship of the son; or, rather, during all the period of minority,

[1] Lecture on Scientific History of Education.

[2] Steinkauler's Case, Opinions of Attorneys-General, Vol. XV. p. 17.

[3] Advocate of Spain (J. D. McPherson), arg. in Buzzi's Case before Umpire (Count Lewenhaupt), United States and Spanish Commission, Washington, D. C.

[4] Phillimore, Com. Int. Law, Vol. I. p. 38, citing Foelix, Droit Int. Privé.

the son did not possess any nationality or citizenship independent of his father. The moment the son attained majority, according to the law of domicile, the right of election (*le droit d'option*) applied to him; and he was competent to decide whether he would be American or German. This election would, of course, be manifested by appropriate declarations and acts.[1] The expression relied upon must have been used inadvertently; for it does not display the accuracy or caution which characterizes other parts of the same opinion.

§ 77. "In Great Britain, naturalization has existed from an early period under two forms. It might be conferred: (1) by the sovereign by virtue of the prerogative; (2) by act of Parliament. The first, as distinguished from the second, is known under the name of denization, and persons acquiring the character of subjects under it are termed denizens. When the status of a British subject is conferred by act of Parliament the proceeding is termed naturalization. Denization can be effected only by letters patent from the sovereign; naturalization only by, or under, an act of the legislature. The difference between the two in point of effect is of a substantial character. Denization has no retrospective operation, while by naturalization, conferred by act of Parliament, the alien is placed in exactly the same position as if he had been born a subject. A denizen is thus in an intermediate position between an alien and a natural-born subject, and partakes of both these characters."[2]

In August, 1870, a convention relative to naturalization was concluded between Great Britain and the United States. Subjects or citizens of either state may be naturalized in the other according to its laws, and after this they cease to retain their old national *status*, but may regain it like other aliens;

[1] Foelix, Droit Int. Privé, Paris, 4th ed. 1866.

[2] Nationality, Cockburn, pp. 27, 28.

and the same alternation of nationality may be renewed over and over.[1]

"In France a stranger became a citizen by the constitution of 22d Frimaire, year VIII., when, after reaching the age of twenty-one, obtaining liberty of domicile, and declaring his intention to remain in France, he had resided there for ten consecutive years. His naturalization was also to be pronounced to be in force by the head of the state. In addition to this the child of foreign parents, born on French soil, may claim the quality of Frenchman in the year succeeding his majority. Naturalization in a foreign country involves the loss of French citizenship.[2] Demangeat on Foelix (I. 88) gives the then latest legislation on this subject. The term of ten years can be reduced to one in favor of inventors and others who confer important services on France. By a law of June 29, 1867, any foreigner, twenty-one years of age, to whom permission should be given to be domiciled in France, could enjoy all the rights of a French citizen after three years."

"Before the adoption of the code in France nationality was variously determined, and only occasionally by the *jus sanguinis;* so that he who was born in France was French *jure soli;* but he who was born abroad of French parents was French *jure sanguinis*."

"Such was the law on this point," says Stoicesco,[3] "at the time of the adoption of the Civil Code. The *projet* of the code reproduced this theory, but it gave rise to sharp criticisms in the tribunal; it should be observed that the character of Frenchman ought not to be conferred on a person, born by accident on French soil, and who besides has no relation to France; on the other hand, it is necessary to take into consideration the nationality of the parents in order

[1] Woolsey, Int. Law, 5th ed. p. 101, citing Phillimore, Appendix iv. of Vol. I., and the treaty in the list of treaties of the United States (1871), p. 405.

[2] Woolsey, Int. Law.

[3] Etude sur la Naturalisation, p. 287.

to determine that of the child. As the result of long discussion, the disposition or resolution of the *projet*, deciding that every individual born in France was a Frenchman in full right, was suppressed; and to-day an alien does not become a Frenchman by the mere fact of birth in French territory." [1]

But children born of alien parents on French soil are not on the same level as other aliens; and they may very readily become citizens of France, on compliance with Article 9 of the Civil Code. These cases are considered at length by Stoicesco [2] under the title "Naturalisation par le bienfait de la loi." "We understand," says this author, "by *naturalisation par le bienfait de la loi*, certain particular methods of naturalization, specially governed by the code, and by virtue of which an alien acquires the character of French citizen, on fulfilment of certain conditions less rigorous than those required by naturalization properly or strictly so called." [3]

§ 78. "Whether anything short of completed naturalization can sunder the tie to the place of origin may be a question. It is held that a domiciled stranger may not with impunity be found in arms against his native country." [4]

For the effects of incipient naturalization compare the case of Koszta as stated by a recent American author.[5]

In concluding a presentation of his views on the Koszta case, Woolsey says: "And it must be admitted that his (Koszta's) mere declaration to become a citizen of the United States did not affect his nationality."

§ 79. Whatever may have been the rule or practice in other times or under other systems of government, the answer of

[1] Pothier, Traité des Personnes, 1re partie, tit. ii. sect 1; Fenet, Exposés des Motifs, tit. vii. p. 628; Lecture de M. Bufnoir.

[2] Etude sur la Naturalisation, pp. 286, 287.

[3] *Ib.* p. 283.

[4] Kent, i. 176, sect. 4.

[5] Woolsey, Int. Law, pp. 99, 100; Appendix.

one state to the demand of another state for indemnity and satisfaction on account of injuries to her citizen or subject, that the individual has been treated no differently than her own citizens or subjects, is not nowadays accepted as satisfactory.[1]

[1] Referring to the discussion in parliament concerning Don Pacifico's case, McCarthy (History of Our Own Times, p. 86) says: "Lord Palmerston had also a great advantage given to him by the argument of some of his opponents, that, whatever the laws of a foreign country, a stranger has only to abide by them, and that a government claiming redress for any wrong done to one of its subjects is completely answered by the statement that he has suffered only as inhabitants of the country themselves have suffered. The argument against Lord Palmerston was pushed entirely too far in this instance, and it gave him one of his finest opportunities for reply. It is true as a general rule, in the intercourse of nations, that a stranger who goes voluntarily into a country is expected to abide by its laws, and that his government will not protect him from their ordinary operation in every case where it may seem to press hardly or even unfairly against him. But in this understanding is always involved a distinct assumption that the laws of the state are to be such as civilization would properly recognize, supposing that the state in question professes to be a civilized state. It is also distinctly assumed that the state must be able and willing to enforce its own laws where they are fairly invoked on behalf of a foreigner. If, for instance, a foreigner has a just claim against some continental government, and that government will not recognize the claim, or, recognizing it, will not satisfy it, and the government of the injured man intervenes and asks that his claim shall be met, it would never be accounted a sufficient answer to say that many of the inhabitants of the country had been treated just in the same way, and had got no redress. If there were a law in Turkey, or any other slave-owning state, that a man who could not pay his debts was liable to have his wife and daughter sold into slavery, it is certain that no government like that of England would hear of the application of such a law to the family of a poor English trader settled in Constantinople. There is no clear rule easy to be laid down; perhaps there can be no clear rule on the subject at all. But it is evident that the governments of all civilized countries do exercise a certain protectorate over their subjects in foreign countries, and do insist in extreme cases that the laws of the country shall not be applied or denied to them in a manner which a native resident might think himself compelled to endure without protest. It is not even so in the case of manifestly harsh and barbarous laws alone, or of the denial of justice in a harsh and barbarous way. The principle prevails even in regard to laws which are in themselves unexceptionable and necessary. No government, for example, will allow one of its subjects living in a foreign country to be brought under the law for the levying of the conscription there, and compelled to serve in the army of the foreign state."

In Egypt there exist — under arrangement between His Highness the Khedive and the representatives of foreign states — a tribunal of first instance and a court of appeal, composed of a certain number of foreigners as judges, clothed with jurisdiction to try "all contentions in civil and commercial matters," not only between natives and foreigners of different nationality, but also between foreign subjects, and the government, the administrations, and the dairas.[1]

In a vivid sketch of the Don Pacifico case, it is said by an historian of the day,[2] that "'Civis Romanus' settled the matter. Who was in the House of Commons so rude that would not be a Roman? Who was there so lacking in patriotic spirit that would not have his countrymen as good as any Roman citizen of them all? It was to little purpose that Mr. Gladstone, in a speech of singular argumentative power, pointed out that '*a Roman citizen was the member of a privileged caste, of a victorious and conquering nation, of a nation that held all others bound down by the strong arm of power, — which had one law for him and another for the rest of the world, which asserted in his favor principles which it denied to all others.*' It was in vain that Mr. Gladstone asked whether Lord Palmerston thought that was the position which it would become a civilized and Christian nation like England to claim for her citizens. The glory of being a 'Civis Romanus' was far too strong for any mere argument drawn from fact and common sense to combat against it. *The phrase had carried the day.* When Mr. Cockburn, in supporting Lord Palmerston's policy, quoted from classical authority to show that the Romans had always avenged any wrongs done to their citizens, and cited the words 'Quot cives Romani injuria affecti sunt, navicularii retenti, mercatores spoliati esse dicerentur,' the House cheered more tumultuously than ever. In vain was the calm, grave, studiously moderate remon-

[1] Foreign Relations of the United States, Part II. 1873.

[2] McCarthy, History of Our Own Times.

strance of Sir Robert Peel, who, while generously declaring that Palmerston's speech 'made us all proud of the man who delivered it,' yet recorded his firm protest against the style of policy which Palmerston's eloquence had endeavored to glorify. The victory was all with Palmerston. He had, in the words of Shakespeare's Rosalind, wrestled well, and overthrown more than his enemies."

"There were in every town of Greece a number of persons whom England was bound to protect, — Maltese, Ionians, and others. It became the practice of this Greek police to make no distinction between them and their fellow-subjects. Compensation was from time to time demanded for many acts of violence to Ionians, but all in vain, till at length an outrage on the boat's crew of Her Majesty's ship, 'Fantôme,' and the cases of Mr. Finlay and Don Pacifico, exhausted Lord Palmerston's patience, and determined him to insist on an immediate compliance with just demands. Mr. Finlay was a Scotchman, whose land was taken to round off the palace gardens at Athens, and no payment could be wrung from the appropriators. Unlike Frederick the Great, who pointed with pride to the mill in his grounds at Sans Souci as a proof that in his empire the rights of every subject, however humble, were respected, Otho could only show a heap of diplomatic notes and private petitions seeking justice, as a proof that in his kingdom it could nowhere be found."[1]

"It was not a mere coincidence that the occasion which inspired the first great effort of Mr. Cockburn as a political speaker, and revealed to the House of Commons his extraordinary faculty for argumentative rhetoric, was the Don Pacifico debate. Don Pacifico was a poor creature; his claims were of the most questionable kind; Lord Palmerston's interference had been even exceptionally blustering, and Mr. Gladstone's condemnation of the whole business, to which Cockburn's speech was a reply, correctly anticipated the verdict of history.

[1] Ashley, Life of Palmerston, Vol. I. p. 179. See, also, *Ib.* pp. 210–227.

Yet the debate was one long triumph for Lord Palmerston, and Cockburn's success was as sudden and striking as any in parliamentary annals. The explanation is that both men were, as they always remained, in hearty sympathy with the ideas which at that time formed the main part of the average Englishman's political gospel, and which were eloquently summed up in the famous *Civis Romanus sum* peroration with which Lord Palmerston ended his speech."[1]

§ 80. In an interesting review of the case of Mirzan — which promises to become a leading and familiar case in the history of the trials of citizens of the United States before consular courts, or mixed tribunals sitting in foreign territory — the writer says: "The need of the United States having jurisdiction in a case like that of Mirzan was not contemplated when the Constitution was framed, but for some time past it has been felt that it is due to Americans, when in foreign countries, and to the dignity of our government, that they should be protected there; and their best protection is, that when accused of offences, they shall not be tried after the primitive methods of certain governments, but by our own laws. Accordingly by treaty of May 7, 1830, with Turkey, it is provided, 'Citizens of the United States of America, guiltlessly pursuing their commerce, and not being charged or convicted of any crime or offence, shall not be molested and put in prison by the local authorities, but shall be tried by their minister or consul, and punished according to the offence, following, in this respect, the usage observed toward other Franks.' Similar provisions are contained in treaties with many other nations. Independently of these treaties the United States could not exercise jurisdiction in any of these countries. Its right is increased by treaty to that extent."[2]

[1] The Spectator, London, February, 1881.

[2] Albany Law Journal, Jan. 29, 1881, Vol. XXIII. No. 5, pp. 87, 88.

"The first subject for discussion" [before the Berne (Switzerland) Confer-

§ 81. By act of Congress, June 22, 1860, and under treaty stipulations between the United States and Borneo, China, Japan, Turkey, Madagascar, Siam, Morocco, Muscat, Persia, Tripoli, and Tunis, civil jurisdiction is conferred upon consular officers of the United States in the above countries over causes in which citizens of the United States are concerned.[1] This jurisdiction is exclusive in disputes between citizens of the United States. In Japan it extends to claims of Japanese against Americans. In China and Siam the jurisdiction is joint in controversies between Americans and Chinese or Siamese. In Madagascar the exclusive jurisdiction extends to disputes between citizens of the United States and subjects of Madagascar. In Turkey there can be no hearing in a dispute between Turks and Americans unless the dragoman of the consulate is present.[2]

The jurisdiction of the consular courts must be exercised

ence of the Association for the Reform and Codification of the Law of Nations, August, 1880], "was that of the proper limits of consular jurisdiction in the East. Sir Travers Twiss read the introductory paper, in which he emphasized the fact that the administration of justice by a foreign consul between his own countrymen ought not to be regarded as an invasion of the sovereignty of the nation to which he is accredited, since it belonged to that general system of personal laws under which all Europe was governed for so many centuries." — *Correspondence in American Law Review*, March, 1881.

See "Études sur la Jurisdiction Consulaire en Pays Chrétiens et en Pays non-Chrétien, et sur l'Extradition," par William Beach Lawrence. Leipzig: F. A. Brockhaus, 1880. Also Dainese *v.* Hale, 91 U. S. Sup. Ct. (1 Otto), 13; Robbins's Case, Wharton's State Trials, pp. 401, 402; "Consular Prerogative in the Levant," *The Nation* (N. Y.), Aug. 25, 1881, p. 152.

[1] Revised Statutes U. S. pp. 791–799; see Acts of Congress June 11, 1864, ch. cxvi. sect. 2, Vol. XIII. p. 121; July 28, 1866, ch. ccxcvi. sect. 11, Vol. XIV. p. 322; July 1, 1870, ch. cxciv. sect. 1, Vol. XVI. p. 183; July 1, 1870, ch. cxciv. sect. 1, Vol. XVI. p. 183. Also Revised Statutes U. S. pp. 791, 799.

[2] United States Consular Regulations, 1874, pp. 13, 105, 295, Washington, Government Printing Office; see also Agreement of Feb. 12, 1871, between Spain and the United States, Treaties between the United States and Foreign Powers, p. 11.

in conformity with, 1. United States laws; 2. The common law; 3. The regulations of ministers.[1]

§ 82. An American jurist,[2] whose opinion is elsewhere cited, furnishes this definition of expatriation. "Expatriation includes not only emigration, but also naturalization, which signifies the act of adopting a foreigner, and clothing him with all the privileges of a native citizen or subject." "Every human being who has rights and duties is *citizen* or *foreigner;* that is to say, he is either a member of a *given* independent society, or he is not a member of that so-given independent society."[3] The "man without a country"[4] may be a familiar and entertaining figure to readers of modern American fiction; but he has no place in the policy of civilized European states. The inconvenience, to use no harsher term, of the assertion of a contrary position would seem to be manifest; and the policy of modern states, by the countenance or maintenance of any such doctrine, would soon obliterate "one of the small lines which make up the broad line separating civilization from barbarism."

§ 83. The same authority declared "that the theory that a naturalized citizen is liable to be divested of his acquired citizenship and allegiance if found within the power of his

[1] Quite recently, during a debate in the Senate of the United States in reference to these extra-territorial courts, Senator Carpenter asked: "Could any honorable senator tell him in what part of the Constitution of the United States was found authority for the creation or maintenance of courts of this character?" The question was not answered, although several senators attempted to reply, and expressed the opinion that there was occasion and practical necessity for the constitution and support of these courts. Forty-sixth Congress, Third Session, Congressional Record, Jan. 7, 1881.

[2] Jeremiah S. Black, Attorney-General of the United States, Vol. XII. p. 20

[3] Austin, Jurisprudence, p. 163; see also Field's International Code, pp. 129, 130.

[4] "Philip Nolan; or, Show Your Passports," E. Everett Hale.

native sovereign, though he may claim the protection of his adopted country everywhere except in the country of his birth, is without any foundation, except the dogma which denies the right of expatriation without the consent of one's native country. A naturalized citizen who returns to his native country is liable, like any other person, to be arrested for a debt or a crime, but he cannot rightfully be punished for the non-performance of a duty which is supposed to grow out of his abjured allegiance. An arrest of a former subject, who has become naturalized in the United States, cannot be justified on the ground that he emigrated contrary to the laws of his original country."

§ 84. In a case before the commission, which was organized under the convention of July 4, 1868, between the United States and Mexico, Anderson and Thompson presented a petition claiming indemnification for damage suffered by them in their real estate in Mexico. It appeared that they had purchased land in Mexico under the Mexican colonization laws, settled upon it, and brought it to a high state of cultivation. It was greatly damaged by the Mexican army in the operations in resisting the French invasion, and the plantation was subsequently declared by Mexico to be public land. Objection, founded on their domicile, was taken by the counsel for Mexico, who insisted that in consequence of such domicile they could not claim against Mexico as American citizens. On the part of the United States it was maintained that they were American citizens, and entitled to claim as such under the treaty. The commissioners differing, referred the question to the umpire, Dr. Francis Lieber. In his decision the umpire said: "Anderson and Thompson became citizens, it is asserted, of Mexico, by acquiring land, for there is a law of the Mexican republic converting every purchaser of land into a citizen, unless he declares, at the time, to the contrary. This law clearly means to confer

a benefit upon the foreign purchaser of land, and equity would assuredly forbid us to force this benefit upon claimants (as a penalty, as it were, in this case) merely on account of omitting the declaration of a negative; that is to say, they omitted stating that they preferred remaining American citizens, as they were by birth, one of the very strongest of all ties." The question presented to the umpire being whether Anderson and Thompson were *bona fide* citizens of Mexico, and not citizens of the United States, when they suffered the injuries complained of, he decided that they were citizens of the United States.

§ 85. The Constitution of the United States says, Congress shall have power "to establish a uniform rule of naturalization." "The subject of naturalization," says Parsons, "excited little attention in the convention, and it gave rise to no debate." Before the adoption of the Constitution each state exercised the right to naturalize aliens. Congress, in pursuance of the power given to it by the Constitution, has, at sundry times, enacted laws of naturalization.[1] From 1858 to 1873 about forty thousand aliens, including over one thousand women, were naturalized by a single court in the city of New York.[2] And the whole number of foreign-born inhabitants of the United States in 1870 was estimated at 5,567,229. In respect of naturalization the United States of America, at an early period in her history, adopted the policy of wise states — and especially of Rome — by encouraging the immigration and facilitating the naturalization of foreigners.[3]

[1] For those in force at the present time, see Parsons, Rights of a Citizen, pp. 88, 89. Revised Statutes of the United States, pp. 352, 380, 382, 1051, 1057, 1058.

[2] The Superior Court.

[3] Phillimore, Int. Law, Vol. I. 379. Greece discountenanced naturalization, and made citizenship inalienable, except as a penalty for crime.—*Wachsmuth's Historical Antiquities of the Greeks*, Vol. XXVII. sect. 33, Woolrych's translation.

In his opinion in Christern's case,[1] Judge Freedman said: "The United States are so largely indebted to immigration for their power, greatness, and prosperity that it would be the act of folly to return to the illiberal policy of George III., who, in consequence thereof, stands charged, in the Declaration of Independence, with having endeavored to prevent the population of the states *by obstructing the laws for the naturalization of foreigners*, and *by refusing to pass others* to encourage their immigration hither."

As the result of naturalization in the United States, a foreigner becomes, to all intents and purposes, a citizen of the United States, with no disability attaching to him on account of his foreign birth, except that he cannot be President or Vice-President of the United States.[2]

[1] The Superior Court, New York. [2] Parsons, *Ib.*

PART III.

§ 86. The first act passed by the Congress of the United States concerning naturalization bears date March 26, 1790.[1]

[1] This act is as follows: —

Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That any alien, being a free white person, who shall have resided within the limits and under the jurisdiction of the United States for the term of two years, may be admitted to become a citizen thereof on application to any common law court of record in any one of the States wherein he shall have resided for the term of one year at least, and making proof to the satisfaction of such court that he is a person of good character, and taking the oath or affirmation prescribed by law to support the Constitution of the United States, which oath or affirmation such court shall administer; and the clerk of such court shall record such application and the proceedings thereon, and thereupon such person shall be considered as a citizen of the United States; and the children of such persons so naturalized, dwelling within the United States, being under the age of twenty-one years at the time of such naturalization, shall also be considered as citizens of the United States; and the children of citizens of the United States that may be born beyond sea or out of the limits of the United States shall be considered as natural-born citizens: *Provided*, That the right of citizenship shall not descend to persons whose fathers have never been resident in the United States: *Provided, also*, That no person heretofore proscribed by any State shall be admitted a citizen, as aforesaid, except by an act of the legislature of the State in which such person was proscribed. — *U. S. Statutes at Large*, p. 103.

This act was repealed by an act passed Jan. 29, 1795, ch. xx.

The acts relating to naturalization subsequent to the act of March 26, 1790, have been: —

"An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject," — Jan. 29, 1795, ch. xx. Repealed April 14, 1802.

"An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on the subject," passed April 14, 1802, ch. xxviii.

An act in addition to an act entitled "An act to establish an uniform rule

The legislation under which admission to citizenship in the United States for some time took place was the third paragraph of the first section of the Act of April 14, 1802, which declared, "That the court admitting such alien shall be satisfied that he has resided within the United States five years at least."[1] This act was subsequently modified by the twelfth section of the Act of March 3, 1813[2] which reads, "That no person who shall arrive in the United States, from and after the time when this act shall take effect, shall be admitted to become a citizen of the United States, who shall not, for the continued term of five years next preceding his admission as aforesaid, have resided within the United States, without being at any time during the said five years out of the territory of the United States." But this last act was itself changed by the Act of June 26, 1848,[3] which declares, "That the last clause of the twelfth section of the act" (that is to say, the section just above quoted) "hereby amended, consisting of the following words, to wit, 'Without being at any time during the said five years out of the territory of the United States,' be and the same is hereby repealed." These amendments left the law to require that the applicant should be a resident of the United States for five years next preceding his admission to citizenship, but at the same time declared that uninterrupted habitation was not necessary; for a man may be, and frequently is, an inhabitant of one place while he is a resident of another; which is the case with all

of naturalization, and to repeal the acts heretofore passed on the subject," passed March 26, 1804, ch. xlvii.

"An act relative to evidence in cases of naturalization," passed March 26, 1816, ch. xxxii.

An act in further addition to "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject," passed May 26, 1824, ch. clxxxvi.

"An act to amend the acts concerning naturalization," passed May 24, 1828, ch. cxvi.

[1] 2 U. S. Stat. at Large, 153. [2] *Ib.* 811. [3] 9 *Ib.* 240.

who leave a residence, with whatever view of duty, business, or pleasure, but with the design of returning to it.[1]

§ 87. In the case of Campbell *v.* Gordon, 6 Cranch, U. S. S. C. Rep. 182, the Supreme Court of the United States said: "The oath, when taken, confers upon him the rights of a citizen, and amounts to a judgment of the court for his admission to those rights. It is therefore the unanimous opinion of the court that William Currie was duly naturalized."

In the case of Spratt *v.* Spratt, 4 Peters, U. S. S. C. 407, the Supreme Court of the United States said, speaking of naturalization: "The various acts upon the subject submit the decision on the right of aliens to admission as citizens to courts of record. They are to receive testimony, to compare it with the law, and to judge on both law and fact. This judgment is entered on record as the judgment of the court. It seems to us, if it be in legal form, to close all inquiry, and, like every other judgment, to be complete evidence of its own validity." The court, in giving judgment admitting an alien to citizenship, judges both the law and the fact, and its judgment is conclusive on both these questions.

It was the opinion of an American jurist,[2] expressed forty years ago, that the doctrine of final and absolute expatriation required "to be defined with precision, and to be subjected to certain established limitations, before it can be admitted into our jurisprudence as a safe and practicable principle, or

[1] "These laws of the United States are based upon the acknowledged principle of expatriation."—*Bates on Citizenship*, 13; Opinions of Attorneys-General of the United States, Vol. XIV. p. 295; T. J. Durant, Advocate of the United States, arg. in Dominguez's case, before United States and Spanish Commission.

The original act concerning naturalization has been regarded as at once the simplest and most satisfactory in practical working. The getting out of two papers has been criticised as unnecessarily complex. It has been said that it was based on the technical theory of (1) application and (2) adoption.

[2] 2 Kent, 45.

laid down broadly as a wise and salutary rule of national policy." English legislation for a long period declared that the quality of citizen, and allegiance as the result of birth, follows the individual during his whole life; and at one time, decisions of some of the courts of the United States inclined to this view; but a recent British statute [1] contains provisions which enable, for the first time, a subject of Her Majesty to renounce allegiance to the crown, and also to resume his British nationality. The American doctrine on this subject for many years remained unsettled, owing to the absence of any express legislation of Congress, and to conflicting interpretations by the executive and judicial officers of the government; and this inconsistency was pointed out at an early date by an American editor.[2] This conflict of opinions during the early days of the republic has been explained on the ground that the executive officers, generally, held to the Jeffersonian (democratic) doctrine, while the judicial officers, in general, maintained the federal or Hamiltonian view. There have indeed been statesmen and cabinet officers who have denied *in toto* the doctrine of perpetual allegiance, and who would appear to have gone to the extent of holding that it was a maxim of the constitutional policy of America, as it was of ancient Rome, not to allow her citizenship to be shared with any other state.[3]

§ 88. The United States government, in the absence of treaty or convention, has of late years gone to the extent of giving protection to naturalized citizens who have returned to their native country, against every new obligation or duty

[1] 33 Vict. ch. xiv. An act to amend the law relating to the legal conditions of aliens and British subjects, May 12, 1870.

[2] 2 Kent, 49, note.

[3] Despatch of Secretary of State to the United States minister at Berlin, in the case of Hoyer; Christian Ernst's case, 9 Opinions of Attorneys-General, 351.

imposed by the laws after the act of naturalization.[1] The Act of Congress of July 27, 1868, Sect. 1,[2] after reciting that the right of expatriation is a natural and inherent right of all people, etc., enacts that any declaration, instruction, opinion, order, or decision of any officer of this government which denies, restricts, impairs, or questions the right of expatriation, is hereby declared inconsistent with the fundamental principles of this government.

In the United States the inclination of the judiciary had been to follow the rule of the English common law, and to hold that neither a native nor a naturalized citizen can throw off his allegiance without consent of the state;[3] but the legislative and executive departments have acted upon the principle that actual expatriation and new naturalization, when the act and the intent combine, not only deprive the citizen of all claim upon the protection of his original country, but deprive that country of claims upon its former citizen against the will of the country of his adoption. But no man can renounce allegiance to a country in which he continues to reside, whatever forms he may go through.[4]

Under the Constitution of the United States, aliens, naturalized agreeably to acts of Congress, enjoy the same rights, and to the same extent, as natural-born citizens, with the single proviso that no person shall be eligible to the office of President or Vice-President except a natural-born citizen, or a citizen of the United States at the time of the adoption of the Constitution.[5]

[1] Calvo, Derecho Internacional, Vol. I. pp. 288 *et seq.*; Case of Llano, heretofore referred to, *ante*, pp. 72, 73; Papers relating to the Foreign Relations of the United States, 43d Cong., 1st Session, Ex. Doc. 1, Part I. p. 1303.

[2] 15 Stat. at Large, 223, 224.

[3] 2 Kent's Com. 49; Story on the Constitution, III. 3, n. 1; Wharton's State Trials, 654; Opinions of Attorney-General, VIII. 157.

[4] Daly on Naturalization, 26 *et seq.*; Dana's Wheaton's Int. Law, 8th ed. 1866, 143, note.

[5] Article II. sect. 1; Paschal, Annotated Constitution of the United States, pp. 167–169.

Of the decision in the Dominguez case a leading American journal said, "An important decision in the matter of the external bearing of our local naturalization laws upon American citizenship has just been rendered by the Spanish-American Joint Claims Commission, in session in this city. The significance of the decision is all the more important as it emanates from a judicial body of mixed nationalities, comprising, as it does, representatives of Spain, Italy, and America. The decision is the judgment of the latter two members of the tribunal, the Italian umpire taking sides with the American arbitrator against the representative of Spain."

§ 89. The Act of Congress (usually referred to as the Civil Rights Bill) confers citizenship. The Constitution uses the words "citizen" and "natural-born citizen."

Citizens (*cives*) of London are either freemen or such as reside and keep a family in the city, etc.; and some are citizens and freemen, and some are not, who have not so great privileges as others. The citizens of London may prescribe against a statute because their liberties are re-enforced by statute.[1]

The word *civis*, taken in the strictest sense, extends only to him that is entitled to the privileges of a city of which he is a member, and in that sense there is a distinction between a citizen and an inhabitant within the same city, for every inhabitant there is not a citizen.[2]

A citizen is a freeman who has kept a family in a city.[3]

The usual definitions of "citizen," in English and American law, will be found in Bouvier (Law Dictionary), Webster, and Worcester.

[1] Jacobs's Law Dictionary; 1 Roll. 105; Paschal, Annotated Constitution of the United States, pp. 201, 204; *Ib.* pp. 273, 274.

[2] Scott *qui tam v.* Swartz, Com. Rep. 68.

[3] Roy *v.* Hanger, 1 Roll. Rep. 138, 149.

The expression "citizens," in American law, is often used to convey the idea of membership in a nation.[1]

It is important to bear in mind that "citizen" is one of those expressions of frequent employment, with the sound of which every one is familiar; but it is an expression, the full or accurate significance of which very few understand. The word is sometimes loosely and inaccurately used even by writers and critics. It has its origin, of course, in the word "city." Originally "city" did not signify a town, but a portion of mankind who lived under the same government, — what the Romans called *civitas*, and the Greeks πόλις; whence the word πολιτικά, "civitatis seu reipublicæ status et administratio."[2]

The word "national," on the other hand, came from the root *natio*, — the origin of which is obvious.

Vattel calls citizens (*citoyens*) those individuals that French writers of to-day call nationals (*nationaux.*)[3]

"The national (*national*)," says Cogordan,[4] "who is invested with full rights (*la plénitude des droits*) is, in general, called citizen. It will not do, however, to confound these two terms, as is too often done. Every national, in fact, is not a citizen, although every citizen is a national.[5]

"In France, for example, minors, married women, the interdicted (*les interdits*) are not citizens, but are nevertheless of French nationality; they are deprived of political rights and only enjoy civil rights."

In Algeria, until within a brief period, the Jews lived in French colonies and among subjects of France without being governed by French laws; and to-day the Arabs subject to

[1] 21 Wallace, 162. See, also, 92 U. S. 542.

[2] Toullier, Droit Civil, Fr. I. 1 t. 1 n. 202; Henrion de Pansey, Pouvoir Municipal, pp. 36, 37.

[3] Foelix, Droit Int. Privé, Liv. I. p. 54, note by Demangeat (edition 1866).

[4] La Nationalité, p. 6.

[5] Bluntschli, Théorie de l'Etat, trad. de Riedmatten, pp. 183 *et seq.*

France are not French citizens, and their status is determined by Mussulman law.[1]

Cogordan points out that the word "nationality" (*nationalité*), now so frequently employed, has been in use in France but a comparatively short time.

§ 90. A natural-born citizen is one not made by law or otherwise, but *born*. And this class is the large majority, in fact, the mass of our citizens; all others are exceptions specially provided for by law. As they become citizens *by birth*, so they remain citizens during their natural lives, unless, by their own voluntary act, they expatriate themselves and become citizens or subjects of another nation; for we have no law (as the French have) to *decitizenize* a citizen who has become such either by the natural process of birth or the legal process of adoption.

The Constitution does not make the citizens (it is, in fact, made by them); it only recognizes such of them as are natural, home-born, and provides for the naturalization of such of them as are alien, foreign-born, making the latter, as far as nature will allow, like the former.

We have [in the United States] no middle class or denizens,[2] but Attorney-General Legaré thought there might be.[3] The example of a Roman citizen and St. Paul's case and claim thereto cited.

Paul's is a leading case of the "*Jus Romanum*"; it is analogous to our own; it establishes the great *protective rights* of the citizen; but, like our own national Constitution, it is silent about his *powers*.

The expression, "natural-born citizen," recognizes and reaffirms the universal principle common to all nations, and as old as political society, — that the people born in a country do

[1] Cogordan, La Nationalité, p. 6.
[2] 1 Sharwood's Bl. Com. p. 374.
[3] 4 Op. Att.-Gen. p. 147.

constitute the nation, and, as individuals, are *natural* members of the body politic.[1]

Every person born in the country is, at the moment of birth, *prima facie* a citizen.

Nativity furnishes the rule, both of duty and of right, as between the individual and the government.[2]

In the legislation of the United States, as has been pointed out elsewhere, the distinction is constantly recognized between citizens and domiciled aliens. In the Constitution itself provision is made for the adjudication of controversies to which aliens are parties by the federal, as distinguished from the state courts,[3] with a view undoubtedly to international obligations resting upon the federal government.[4]

§ 91. An alien is a subject of a foreign state who has not been born within the allegiance of the crown of this kingdom.[5]

Phillimore indicates the inconsistencies in the doctrine as to the law of personal status, which heretofore prevailed in England and in the United States, and compares with it the doctrine of continental law.[6]

No alien who is a native citizen or subject, or a denizen of

[1] Bates on Citizenship, p. 12.

[2] 2 Kent's Com. Part IV. sect. 25; 1 Bl. Com. ch. x. p. 365; 7 Coke's Rep. and (Calvin's Case, 11 State Trials, 70) Doe *v.* Jones, 4 Term, 300; Shanks *v.* Dupont, 3 Pet. 246; Horace Binney, 2 Am. Law Reporter, 193. Bates on Citizenship (29 Nov. 1862), pp. 8–12; Paschal, Annt'd Constitution of the United States, p. 167, notes.

[3] Constitution, Art. III. sect. 2.

[4] See, also, the Judiciary Act of 1789, sects. 9, 11; 1 Stat. U. S. 76, 78. J. Mandeville Carlisle, H. B. M.'s Counsel, arg. before the Mixed Commission on British and American Claims, under Treaty of Washington, May 8, 1871. As to the status and rights of aliens resident in the United States before the U. S. Court of Claims, see Fischera's Case, 9 U. S. Court of Claims, p. 254, and cases cited; also Dauphin's Case, 6 Id. 221.

[5] Reg. *v.* Burke, 11 Cox, C. C. 138.

[6] Int. Law, Vol. IV. pp. 258, 259, 265.

any country, state, or sovereignty with which the United States are at war at the time of his application, shall be then admitted to become a citizen of the United States.[1]

In the United States, as in some other countries, proof of the naturalization of an individual is ordinarily made by the production of a regularly certified copy of letters of naturalization; but in the absence of such letters, naturalization may be established as any other fact is.[2]

In like manner, a change of national character is a fact, which may be established like any other fact; and the same rule of evidence must apply whether such change of national character is the result of collective naturalization, of marriage, or of any other recognized method.

Provisions in treaty stipulations, — which are usually but inaccurately described as "naturalization treaties," — which in any manner qualify or limit the effect of naturalization as recognized by international law, must be, in so far, considered in derogation of international law. "Treaties are declaratory of international law, so far as they imply or set forth its principles; but in derogation of it between the contracting powers, so far as their legal rights are varied by their mutual stipulations."[3]

§ 92. Of the several methods already mentioned by which naturalization may be acquired, the most usual is that by grant to individuals, on compliance with certain conditions prescribed by sovereign power. Whatever mode the sovereign power points out must be followed by the applicant, under penalty of having his application for admission to citizenship refused; and each state regulates the methods and

[1] Revised Statutes of the United States, p. 382, sect. 2171.

[2] See opinion of umpire *in re* Pradel *v.* Mexico, Mixed Commission on Mexican and American claims, where circumstantial evidence was relied on to prove naturalization. Field, International Code, p 136 and citations.

[3] Wildman, International Law, "Peace," p. 2.

decides what constitutes evidence of compliance with such requisites.

In the case of individual naturalization, the usual and ordinary evidence of a change of nationality is the production of the letter or certificate of naturalization. The state usually commits to particular officers or courts the function of applying the law and of issuing the certificate. But national character, however obtained, may be proved as any other fact.

It is the right of each nation to establish the form and requisites for the naturalization of aliens, and to determine what acts must be done in order to acquire the new nationality. To fix the conditions in accordance with which an individual may be admitted to form part of a society cannot be the attribute of any power except the rulers of such society; and it is, for the same reason, the natural and peculiar privilege of each nation to point out who may be naturalized, and by what means.[1]

§ 93. Sometimes the sovereign power or legislative will speaks directly, and grants naturalization to a particular individual by name; but ordinarily it is satisfied with prescribing the terms upon which naturalization will be granted generally, and leaves the duty of carrying out its will in detail to other hands. In the United States, for instance, the function and office of transforming aliens into American citizens is often committed to state courts, and this has sometimes been made matter of complaint by foreign nations, on the ground that their citizens or subjects are often denationalized through the instrumentality of the courts of a power unknown and unrecognized by them. One of the practical inconveniences of this, in the United States, has been the lack of uniformity

[1] Martin's Case before Mixed Commission on Mexican and American Claims (Treaty of July 4, 1868), Washington, D. C. See Historia de sus trabajos y procedimientos y exposion metodica de los principios establecidos en sus decisiones," p. 26, por Jose Ignacio Rodriguez. Mexico: Imprentor del Gobierno, en Palacio, 1873.

in the method or forms of naturalization, and the absence of any public record, in the archives of the United States, of naturalizations. The attention of the Executive Department was very earnestly called to some of these matters by the American minister at Berlin;[1] and expressions in the message of the Executive, heretofore quoted, show that he had advised action on these suggestions by the Congress of the United States.[2]

It will be understood that in other than a constitutional government the power to naturalize aliens rests with the autocrat or absolute ruler, whatever may be his title.

§ 94. A collective naturalization is effected when a country or province becomes incorporated in another country by conquest, cession, or free gift.[3]

Of this collective naturalization there are many examples.

1. All *white* persons or persons of European descent, who were born in any of the colonies, or resided or had been adopted there before 1776, and who adhered to the cause of independence up to the 4th of July, 1776.[4]

2. All the inhabitants of Florida, at the date of the treaty of cession, Oct. 24, 1819, who adhered to the United States and remained in the country.[5]

3. All persons who were citizens of Texas at the date of annexation, viz., Dec. 29, 1848, became citizens of the United States by virtue of the collective naturalization effected by the act of that date.[6]

And so of all the inhabitants of California and other territory acquired by the treaty of Guadalupe Hidalgo, on the 2d

[1] Mr. J. C. Bancroft Davis.

[2] See Field's Int. Code, p. 139, art. 270.

[3] 1 Phillimore, Internat. Law, p. 382, citing 2 Günther, p. 268, note (*e*).

[4] See Paschal, Annotated Const. p. 222, etc.; U. S. *v.* Ritchie, 17 How. p. 538.

[5] See Am. Ins. Co. *v.* Carter, 1 Pet. 542, 543.

[6] See Citizens of Texas, 13 Op., Akerman, p. 397, 1871.

of February, 1848, who remained and adhered to the United States.[1]

4. All the inhabitants (Mexican citizens) of Arizona at the date of the Gadsden Treaty, 1854, who adhered to and remained in the United States.[2]

5. All the free white or European inhabitants of Louisiana and the Creoles of native birth residing there at the time of the purchase from Napoleon I., by the treaty of April 30, 1803, and who remained in and adhered to the United States, and the descendants of all such.[3]

Nationality obtained by this method, said the arbitrator of the United States,[4] must be held as sound and valid as that procured by individual specific compliance with the naturalization laws.

When a portion of territory is annexed to a country by conquest, or by cession, and has been ratified by treaties, it is not the custom to change abruptly the nationality of the individuals belonging to the territory. The treaties usually fix a certain period within which the individuals may preserve the nationality of origin, by complying with certain conditions, which usually consist of a change of domicile beyond the limits of the annexed territory, and of a declaration of intention to preserve the primitive nationality. This right, which defeats naturalization as the result of annexation, at the will

[1] See Sabariego *v.* McKinney, 18 How. 289.

[2] See 10 St. 1035, Art. 5.

[3] 6 St. at Large, Art. 3, p. 202. The treaty between France and the United States, of April 30, 1803, contained the following article: —

"The inhabitants of the ceded territories shall be incorporated into the Union of the United States, and admitted, as soon as may be practicable, in accordance with the principles of the Federal Constitution, to the enjoyment of all the rights, privileges, and immunities (*à la jouissance de tous les droits, avantages, et immunités*) of citizens of the United States, and meanwhile they shall be maintained and protected in the enjoyment of their liberty, property, and in the exercise of the religions which they profess. (Art. III.)

[4] *In re* Galatea Marrot *v.* Spain, United States and Spanish Commission under Agreement of Feb. 12, 1871.

of the parties interested, is known by the name of the right of election (*le droit d'option.*)[1]

§ 95. In addition to the above methods collective naturalization is effected when a whole population is emancipated and invested with the full rights and privileges of citizenship. Such naturalization resulted, in the case of the negroes resident in the Southern States, from the emancipation proclamation of President Lincoln, and the reconstruction measures of the Congress of the United States.[2]

§ 96. Recently a joint resolution has been introduced in the United States Senate[3] declaring that Indians born in the United States, and subject to the jurisdiction thereof, are persons within the meaning of the Constitution of the United States; and that such persons are citizens of the United States and of the states wherein they reside, and are subject to the jurisdiction of the government of the United States. It is said that the matter will come before Congress for discussion at an early day. The British policy is to recognize the Indians as subjects, and hold them amenable to the laws as such. If an Indian inspector[4] who recently testified before a committee of the United States Congress is to be credited, the American practice has been to treat the Indians as equals,

[1] Stoicesco, Etude sur la Naturalisation, pp. 352, 353.

[2] The emancipation of the negroes in the Southern States, and the grant of suffrage, were practically contemporaneous. The modes by which freedmen became Roman citizens, and were clothed with full civil rights and political privileges, were graduated and guarded. They are fully stated in recent valuable contributions to the history of Roman civil law. (Ortolan, History of Roman Law, translation of Prichard and Nasmith, pp. 571, 572; Hunter, Roman Law, pp. 486, 496; Poste's Gaius, pp. 49–55.) Before the freedmen became entitled to enter upon the enjoyment of these rights and privileges, they were obliged to do certain acts and to render services which tested their qualification and capacity.

[3] By J. T. Morgan, Senator. S. Resolution, No. 88. Forty-sixth Congress, Second Session.

[4] Mr. Pollock, Senate Committee on Indian Affairs, Forty-sixth Congress, Second Session.

and to make treaties with them, then to break them and abuse the "treacherous red-skins."

As the law of the United States now stands, the Indian is not recognized as a "person," and he has no legal right to any personal property. The peculiar protection which he enjoys, or is supposed to enjoy, at the hands of the United States, is due to his tribal relations as member of a tribe with which the United States are at peace under treaty stipulations.[1]

§ 97. We have seen that naturalization proper is described as a change of nationality. This description imports what may be called a two-fold act, or rather two distinct acts, on the part of the naturalized alien, namely, (*a*) an abandonment of the nationality of birth; and (*b*) the acquisition of the nationality of choice. Whenever the question arises, Has a particular individual been naturalized? the answer is reached by ascertaining whether or not he has been a party to the act, and has manifested his consent thereto. This division of the acts which constitute naturalization corresponds with the analysis given by a judicial officer who was also attorney-general of the United States.[2]

§ 98. Calvo[3] says, "There are two causes which determine a change of nationality,— the law, or the acts of the individual. The cession of a territory, for example, implies a change of nationality by virtue of a law. The marriage of a woman with a foreigner (according to the legislation of nearly all the

[1] See *passim*, Pennock *et al. v.* Board of County Commissioners, etc., 103 U. S. (13 Otto) p. 44.

For history of recent treatment of Indian affairs, and recommendation for future policy, see Annual Report of Secretary of the Interior (Schurz), accompanying the President's Message, December, 1880.

For sharp criticism of the Indian policy of the United States, see A Century of Dishonor, by H. H.

[2] J. S. Black, *supra*.

[3] Derecho Internacional, Vol. I. pp. 288 *et seq.*, Paris, 1868.

nations of Europe and America) and naturalization may serve as examples of a change of nationality as the result of the acts of the individual." This author presents an exposition of his views under which he thinks the apparent conflict, in some cases, between the laws of naturalization and expatriation may be reconciled.[1] Under the ancient law of France naturalization was proved by production of the letters of naturalization (*lettres de naturalité*) which were granted to the applicant by the king. But the grant of these letters was abolished by the Revolution. Letters patent of naturalization continued to be the sole method of proof until 1848. Since that date decrees (*décrets de naturalisation*) are rendered in the ordinary form of decrees emanating from the executive power (*chef de l'état*), and are inserted in the Bulletin des Lois, and at the same time a copy is transmitted to the alien who is naturalized; the minute is preserved in the archives of the state. The proof results from the decree conferring the naturalization, and from its insertion in the Bulletin des Lois.[2] The naturalized citizen enjoys all civil and political rights, and as the result of naturalization the alien becomes a citizen at the same time that he becomes French.

Naturalization takes effect only in the future; it is not at all retroactive. M. Demolombe[3] gives the reason why naturalization is not retroactive.[4] The law did not intend, explains this author, that naturalization should be retroactive, and by overturning acquired rights bring trouble to the family and to the state. That the effect of naturalization is not retroactive is proclaimed by Article 20 of the Civil Code, even in the cases of those who recover the French character. It is declared, in effect, in this article that even those who, after having lost it, recover the character of

[1] Derecho Internacional, Vol. I. pp. 288 *et seq.*, Paris, 1868.
[2] Stoicesco, pp. 271, 272.
[3] Cour de Droit Civil, Liv. I. ch. i. tit. i. sect. 173; edition 1874, I. p. 211.
[4] *Ib.* p. 273.

Frenchmen cannot avail themselves of its privileges until they have fulfilled all the conditions necessary to its recovery, and they can exercise the rights granted to them only after this date. With much greater reason must the same rule be applicable in the case of individuals who, not having been French originally, acquire the character only by naturalization.

All nations have acted on the universally accepted idea that the national rights, active and passive, of the new citizen come into operation from the time of his naturalization, and in no way affect his anterior status.[1]

§ 99. What was called in the law of France *le droit d'aubaine* may have had three meanings. In a narrow sense, it designated the right by virtue of which the king succeeded to the rights and interests of the alien (*à l'aubain*); for among the disabilities under which the alien suffered was one which precluded him from transmitting his property by succession. In a broader sense this expression comprised the whole collection of disabilities which aliens suffered, from the point of the transmission or of the acquisition of property by will. Finally, in a very extended sense, it designated the collection of laws concerning the aliens (*les aubains*). *Aubains* were foreigners (*étrangers*) who had become established in the kingdom of France, or those who, being native, had voluntarily made themselves foreigners (*étrangers*).[2] "Another description of inhabitants of the kingdom," says Bacquet, "are *aubains*, that is to say the aliens, who are not born in France but in a foreign country, where the king of France is not known or obeyed, and who have come to reside in the kingdom."[3]

[1] Wesche's case, reference, *supra*, p. 61. One of the propositions of Cockburn, heretofore cited, seems to assume that the act of naturalization, in respect to some rights and privileges at least, is retroactive.

[2] Stoicesco, citing Loysel, pp. 181, 182.

[3] Œuvres, edition 1621, *Du Droit d'Aubaine*, Part I. ch. i. n. 1.

"Collective naturalization extends at the same time to the husband and the wife, to the father and the children. We have seen that this naturalization results immediately from operation of the law or from political acts; the one and the other at once govern all the inhabitants or subjects of the territory."

"The individual naturalization of the husband carries with it that of the wife; the wife passes with him under the empire of the new country chosen by the husband. This is the result of the intimate tie which unites the spouses, sanctioned by all legislations, and thus passed into a principle of international law. So that whenever an alien in France obtains naturalization, his wife acquires at the same time, and by law, the French character, without the necessity of any declaration or other act on her part."

"The doctrine of Foelix," says Demangeat, "according to which the wife always and necessarily has the same nationality as the husband, seems to present this advantage, — that it would prevent serious difficulties and embarrassing conflicts between the personal statutes of the two spouses. But I think, with MM. Delvincourt, Duranton, Demante, and Valette, that this doctrine ought to be rejected (*repoussée*) as iniquitous and as contrary to the spirit or intention (*la pensée*) of our legislature. In fact, besides the discussion of Article 214 of the Code Napoleon in council of state, M. Regnauld de St. Jean d'Angély says, 'that beyond question *the husband has not the right to make his wife an alien*, but that nevertheless he ought not to be obliged to separate himself from her whenever his business carries him beyond French territory.' In the session of the sixth thermidor, year IX, this was the way in which the First Consul expressed himself: 'There is a great difference between a Frenchwoman who marries an alien and a Frenchwoman who, having married a Frenchman, follows her husband when he expatriates himself: the first, by her marriage, has renounced her civil rights, the other only loses them to do her duty.'"

Further, the difficulties resulting from conflict between the law of the husband and the law of the wife do not necessarily present themselves as the consequence of the doctrine which I uphold. In fact, although the husband may not deprive the wife of her nationality, he may, on the other hand, deprive her of her domicile; the married woman, except in case of separation (*séparation de corps*), has no other domicile than that of her husband.[1] Then, if it be conceded that the personal statute depends on domicile and not on nationality, the result will be that the spouses, although not members of the same nation, will be subject to the same personal statute. Article 3, of the Code Napoleon, presents nothing to the contrary of this view, for it supposes a Frenchman *resident* but not *domiciled* in a foreign country.[2]

Every man born and domiciled in France, of twenty-one years of age; every alien of twenty-one years of age, who, being domiciled in France for the period of one year, and who lives by his labor, or acquires property, or marries a Frenchwoman, or adopts a child, or supports an old man; finally, every alien who shall be deemed by the *corps législatif* to have deserved well of mankind, is admitted to the exercise of the rights of citizen of France.[3]

After the Constitution of 1793,[4] an alien, in order to become a French citizen, had to begin by a declaration of his intention to establish himself in France.

The notice to the council of state (*conseil d'état*), which was provided for by the Constitution, was never inserted in the Bulletin of Laws (Bulletin des Lois); it had not, indeed, legislative authorization. Moreover, it was admitted at the chancellor's office (*à la chancellerie*) that the point of departure of the ten years of residence or time of probation

[1] Code Napoleon, art. 108.

[2] See, M. de Savigny, tome VIII. sect. 363. (Foelix, Vol. I. pp. 93, 94, note by Demangeat.)

[3] Constitution of 1793, art. 4.

[4] Tit. xi, art. 10.

(*stage*) was not necessarily the authorization to an alien to establish his domicile in France.[1]

A valuable and interesting history of the civil status of aliens in France under ancient and modern law, up to the year 1842, will be found elsewhere.[2] In the last chapter the author discusses particularly the status of an alien naturalized; of an alien permitted by the king to establish a domicile in France; of an alien with whose country France has concluded a treaty; and the status of ex-Frenchmen. The existing law of France in respect to an alien naturalized is stated with fulness by a contemporary author.[3]

§ 100. While marriage does not have any effect upon the citizenship or nationality of the husband,[4] it is usually said it operates a change in the status of the wife, — provided, of course, her original citizenship or nationality be different from that of her husband. Under these circumstances, at the moment of marriage the woman loses her citizenship or nationality, and is covered with that of her husband; and this citizenship or nationality thus acquired generally continues during the existence of the marriage union. To this effect appear to be the laws of several modern states.[5]

The law of France recognizes a special method of naturalization peculiar to women, and resulting from marriage.[6]

A full discussion of the marriage contract at common law and the marriage contract in the United States will be found

[1] Foelix, Vol. I. pp. 85, 86.

[2] Histoire de la Condition Civile des Etrangers en France. Par Charles Demangeat. Paris.

[3] Cogordan, La Nationalité, pp. 128 *et seq.*

[4] Pothier, Traité des Personnes, 1re partie, tit. ii. sect. 3, t. xxiii. p. 269; Stoicesco, Etude sur la Naturalisation, p. 211.

[5] Code Napoleon, March 8, 1803, ch. i. No. 12; Laws of Prussia, Dec. 31, 1842; Ley de Extrangeria, July 4, 1870; Codice Civile del Regno d'Italia, Lib. I. tit. i.; Statutes of Great Britain, 7 and 8 Victoria, c. 66, sect. 16; Statutes of United States, Feb. 10, 1855; Foelix, Droit International Privé, Vol. I. p. 98; Stoicesco, Etude sur la Naturalisation, p. 214.

[6] Cogordan, La Nationalité, pp. 255 *et seq.*

in Lawrence's "Legislation comparé et Droit International sur le Mariage." This author treated very fully the question of "The Disabilities of American Women married abroad."

Pothier says[1] that an alien who has lived many years in France, who has married there, who has had children there, is not the less regarded as an alien.

§ 101. Another method of naturalization was effected under the ancient law of France, by virtue of treaty stipulations between states, or by decree of the state. They might apply immediately, or after a time agreed upon, to all or some of the citizens or subjects of the proprietary sovereigns of respective territories.[2]

"Change of nationality," says Foelix,[3] "results from the sole operation of law, or from acts of the individual. To the first class belongs the marriage of a woman, according to the terms of Articles 12 and 19 of the French civil code, and of analogous laws copied from this code." Demangeat, however, combats this position, and says: "It does not seem to us accurate (exact) to present this change of nationality, which operates upon the person of the wife, as the result of the *sole operation of law*, and not of *the act of the individual*. According to our view, the law intends to lay down a presumption; and the legal presumption is not extravagant, for the woman who marries a man who she knows is an alien sufficiently testifies by the very act that she consents to change her nationality. So far we may admit without difficulty that if, after the marriage, the husband loses his nationality as the consequence of acts in which the wife has not participated, this will not exercise any influence in relation to the nationality of the woman; indeed, the spirit

[1] Traité des Personnes, 1re partie, tit. ii. sect. 3, t. xxiii. p. 269.

[2] Demangeat, Condition Civile des Etrangers en France, n. 48, p. 205 *et suiv.*; *Ib.* op. citata, n. 47, p. 194; Stoicesco, Etude sur la Naturalisation, pp. 212, 216; Foelix, Droit Int. Privé, Vol. I. p. 83, note.

[3] Traité de Droit International Privé, Paris, Vol. I. p. 82.

of the law is not by any means that the woman necessarily belongs, and in every case, to the same nationality as the husband. It seems to us always difficult to go to the extent of saying that the woman is free to escape the application of Articles 12 and 19, in making a declaration of her wish in this respect outside the celebration of marriage; from the moment she marries an alien, it must be that she consents to lose her own nationality. In a word, we admit freely that the act of marrying an alien is a voluntary act of the woman, which brings about the change of nationality; but we believe that in the opinion of the legislator, it brings it about forcibly." Colmet-Daage [1] does not admit the distinction drawn by Demangeat.

§ 102. Some authors hold that during coverture the nationality of the wife, if different from that of the husband, is suspended; but other writers insist that the national character of the woman is not necessarily, and without her consent, changed absolutely as an inevitable incident of marriage.

Foelix sustains the first system; but a contrary doctrine is upheld by Demangeat, de Delvincourt, de Duranton, de Demante, and de Valette, who insist that the opinion expressed by Foelix "is iniquitous, and contrary to the spirit of French legislation."

The better opinion is that marriage confers certain privileges of national character upon the wife, but does not arbitrarily deprive her of the political privileges which she had before marriage;[2] and it has been decided that neither marriage to a foreigner, nor residence in a foreign country, necessarily deprives the wife of the national character of origin.[3]

[1] Revue de Droit Français et Etranger, tome I. p. 401. But see Cogordan, La Nationalité, pp. 255, 257.

[2] Phillimore, Int. Law, p. 350; Field, Int. Code, p. 135.

[3] Case of Mary Bieneourt, No. 235, before United States and Mexican Claims Commission, Washington, D. C. See also Cadwalader's Leading Cases on International Law, pp. 35, 36.

After citing the text of Article 19 of the Civil Code of France,[1] Cogordan comments as follows: "It is hardly necessary to remark the error of language in this text: all that the law [of France] may say is, that a Frenchwoman who marries a foreigner is no longer French. But it is the province of the foreign law, of the law of the husband, to decide whether it will accept as its own subjects of a foreign state. Article 19 contains a provision (*une disposition*) which evidently oversteps the limits of municipal legislation."[2]

§ 103. The rule that during coverture the nationality of the wife is suspended, or merged in that of the husband at the time of the marriage, is subject to exception and qualification. This method of a change of national character, when produced, is altogether a result of the marriage union, with which it has been held to be coincident and conterminous; and it terminates, or rather may terminate, at the option of the woman, at the moment of legal separation, and any time thereafter, whenever her legal status or condition as *feme sole* exists: it matters little what may be the character of the separation, or how it may happen, provided it be a legal separation. And this change of nationality at the option of the woman determines the status of the minor children, who remain under her control so long as they are under the disability of minority. But minor children may be emancipated by operation of law. The wife also may be emancipated during coverture, so as to enable her to change or to preserve her nationality.[3]

[1] "The Frenchwoman who marries an alien follows the condition [status] of her husband." — *Translation.*

[2] La Nationalité, Paris, 1879, p. 259.

[3] During the French Revolution (1793) many wives of the *emigrés* deemed it necessary for the preservation of the fortune of their children and their own personal safety to procure acts of divorce."— *Vie de Mme. de la Fayette.* Par Mme. de Lasteyrie, sa fille, p. 285. Paris: Zecherren Fils.

In the year 1806 a *feme covert* was naturalized by the United States

§ 104. "The nationality and the domicile of origin is preserved during all the period of the minority of the child; because during all this time he has not, legally speaking, any will. But as soon as, agreeably to the law of the domicile of origin, the child attains his majority, he is at liberty to change his nationality and to select another domicile. There is a legal presumption in favor of the preservation or continuance of the native nationality, or of the domicile of origin, until proof of change. From this it follows that whenever an individual has two domiciles in two different territories, the preference should be in favor of the place of birth. Moreover, it is a principle not denied that temporary absence is not sufficient to establish proof of a change of nationality or of domicile."[1] But the fact of naturalization in a foreign country is conclusive; and the evidence of such fact is the letter or certificate, issued or granted by the naturalizing country.[2]

§ 105. As a general rule, it is true that "a woman marrying takes her husband's domicile, and changes it with him. A minor child has the domicile of his father, or of his mother if she survive his father; and the surviving parent with whom a child lives, by changing his or her own domicile in good faith, changes that of the child. And even a guardian has the same power."[3]

Circuit Court of the District of Columbia. *Ex parte* Marianne Pic, 1 Cr. C. C. 392. In March, 1880, a Frenchwoman (Frances Rougger) applied for naturalization papers in Cincinnati: and this case is said to raise several new questions as to the rights of women and foreign persons.

[1] Foelix, Droit Int. Privé, Paris, 1866, pp. 56, 57. As to presumption of law in favor of domicile of origin, Foote, Private International Jurisprudence, pp. 11 *et seq.*, citing Crookenden *v.* Fuller, 29 L. J. P. & M. 1; Somerville *v.* Somerville, 5 Vesey, 786.

[2] Laws of Spain, Italy, France, Germany; Opinion of Umpire in Delgado's case, and in the Dominguez case, United States and Spanish Commission, 1879.

[3] Parsons, Rights of a Citizen of the United States, p. 645.

Lord Chief Justice Cockburn, in his work on nationality, expresses the opinion: "That the nationality of a married woman should always follow that of the husband, whether original or acquired; but on widowhood, a woman should be entitled to resume her original nationality on returning and settling in her former country." (p. 216.)

And again he says, "On the other hand, provision is made in all the continental codes for enabling a woman whose nationality of origin has thus been changed into that of her husband, to resume, if so minded, her original nationality on becoming a widow, on the condition, however, if not resident in the country of origin, of returning to it, for which in some instances the authority of the state is required." (p. 25.)

It will be observed that the learned author, in his monograph, employs the expression "nationality" when he means to describe citizenship, or the relation which involves allegiance and protection reciprocally, and not terms of a less definite or a narrower signification, sometimes used as synonymous. In doing this, he keeps constantly and prominently in view the status of the individual in relation to the state, while avoiding altogether the confusion into which other writers have been drawn, as a result of the use of loose or inexact terminology.

§ 106. The second edition of Field's "Outlines of an International Code"[1] contains the following articles: —

"Except as provided in Article 260, marriage does not change the national character of the wife."

"Marriage gives to the wife the privileges of the national character of her husband, but does not deprive her of the privileges of that which she had before marriage, except as prescribed by the next article."[2]

[1] Articles 249, 259, 260, pp. 132, 135, 136.

[2] In a note to this article the author says, "This should seem to be the proper rule. Marriage 'may change her civil rights, but it does not affect her

"The marriage of a woman in her own country with a foreigner domiciled therein should certainly not denationalize her. The objection of double allegiance does not preclude her enjoying the privileges. As to the effect of marriage on nationality, see Annual Register, 1868."

"If before or after her marriage, the domicile of a woman is permanently removed from the territory of the nation to which she previously belonged, she acquires by such marriage and removal the national character of her husband."

§ 107. As in the case of married women, this change of national character springs from and is the result of marriage with an alien and a change of domicile, it is natural and consistent that, on conclusion of this union and abandonment of this acquired domicile, the right of the woman to resume her native domicile, and with it her national character, or to choose a new one, should revive. And so it is, according to the law and practice of France.

"The French courts," says Phillimore,[1] "have most justly decided that the wife *legally separated* from her husband may choose her own domicile."[2]

In this connection the author quoted means of course to indicate *national* domicile; or, in other words, to narrow the term, and to employ it only in this, its limited signification.

The description, "legally separated," includes, of course, divorce *a mensa et thoro*, death, and any other separation known to nature, or recognized as absolute by law. "I am not aware of any decided case in England upon the question of

political rights or privileges.'" Story, J., in Shanks *v.* Dupont, 3 Peters' U. S. Sup. Ct. Rep., 246. This case was, as it will be observed by the reader, decided before the passage of the Act of Congress, Feb. 10, 1855, 110 U. S. Statutes, 604.

[1] Int. Law, Vol. IV., p. 65.

[2] Arrêt du 23 novembre, 1848; Dalloz, Ann. 849, ii. 9.

the domicile of a wife divorced *a mensa et thoro;* but on principle it seems to me that there can be little doubt that in England, as in France, it would not be that of her husband, but the one chosen for herself after the divorce."[1]

§ 108. In construing the act of Feb. 10, 1855, the Supreme Court of the United States[2] said: "His (the husband's) citizenship, whenever it exists, confers, under the act, citizenship upon her. The terms 'who might be naturalized under the existing laws' only limited the application of the law to free white women."

We shall see that marriage, in its effect upon the wife, is by some writers regarded as one of the methods of naturalization;[3] but it may well be doubted whether marriage can be described as a method of naturalization, strictly speaking, or can be said to have the full effect, or impose all the obligations that result from and are implied by naturalization proper. It has been said that the wife, at the moment of marriage, loses her citizenship and acquires that of the husband; but perhaps it would be more correct to say, with the author first cited, "The condition of the wife, from the standpoint of nationality, is temporarily lost in that of the husband." If this description be qualified by adding the words "during the marital union," it is undoubtedly correct; for the moment this relation ends, by *legal separation*, as suggested by Phillimore, the woman may, at option, resume her nationality of birth, or she may acquire a new one. The common-law idea that husband and wife are one, and that the husband is

[1] Phillimore, Int. Law, 1874, Vol. IV. pp. 63, 64; see, however, Dolphin *v.* Robins, 7 H. L. C. 390.

[2] Kelly *v.* Owen, 7 Wallace, 496. It has been frequently said that the marriage of an alien woman to a citizen naturalizes her. Leonard *v.* Grant, Op. Deady, J., U. S. Circuit, Oregon, Dec. 15, 1880; Bishop on Marriage, Woman, sect. 505; Regina *v.* Manning, 2 C. & K. 887; Burton *v.* Burton, 1 Keyes, 359.

[3] Stoicesco, 211, 212; Cogordan, p. 255.

that one, applies, of course, only during the existence of the relation.

"Marriage gives to the wife the privileges of the national character of her husband, but does not deprive her of the privileges which she had before marriage, except as prescribed by the next article."[1]

"By Roman civil law, in whatever way the wife came under the dominion of her husband,[2] she passed from under the *patria potestad* of her father and her own family, and she lost all her rights in connection with that family, but she entered into the family of the husband, in which she acquired, after a certain fashion, the character and rights of a child: 'Filiæ loco incipit esse; nam si omnino, qualibet ex causa, uxor in manu viri sit, placuit eam jus filia nancisci.'"

This resulted, in great measure, from the principle which insisted upon the subjection of women. But, from whatever cause it springs, we have seen, in late years, under a practice recognized by British and United States statutes, numerous instances where the rights of married women have been so far extended as to result in practical emancipation, at law, from the ancient dominion of the husband.

§ 109. "It is true," says Merlin,[3] "that there is a general maxim that the wife follows the condition of her husband; but it would be a great error to infer from this maxim the consequence that a woman who has either become French by marriage, or was born French, can lose her status and quality as a Frenchwoman by the naturalization of her husband alone."

Equally erroneous would be a similar inference from this doctrine that the wife has no other domicile than that of her husband. Laws relating to *status* and *capacity* are not

[1] Field, Int. Code, sect. 259, p. 135.
[2] Ortolan, Instituciones, Madrid, Lib. I. 24, 51.
[3] Qu. de Droit, Divorce, xi.

governed by the mere law of foreign domicile, apart from naturalization, it is presumed, Merlin means.[1]

§ 110. The historical connection, as well as instances in which collective naturalization has resulted from annexation of foreign territory, is traced at some length by a recent French author.[2] "The Civil Code" (of France), says this author, "contains no reference to any transfer of allegiance from this point of view, although this method of naturalization was recognized by the law of nations and by political usage. Special laws, political treaties, and diplomatic conventions govern the situation of inhabitants of annexed territory."[3] And he considers that the silence of the civil legislator (of France) on this point is dictated by prudence, and by a desire not to excite the susceptibilities of neighboring nations.

§ 111. "During the interval allowed by treaties to exercise the right of election of nationality, persons belonging to territory annexed occupy an uncertain status. If during the period allowed choice has not been made, or more generally if the election has not been actually made, either because the time has expired or because the official before whom the choice has been made was not qualified, the persons who fall within the treaty become retroactively citizens of the country which has annexed a portion of foreign territory. If, on the contrary, the election has been actually made, it is deemed that the individuals have never ceased to enjoy the nationality of choice. But here is a question which has given rise to some difficulty: Does naturalization, resulting from annexation, produce the same effects with regard to women and minors who may be in the territory annexed? And in this case may

[1] Phillimore, Int. Law, Vol. IV. p. 324.
[2] Stoicesco, Etude sur la Naturalisation, 344 *et seq.*, Paris, 1876.
[3] *Ib.* 344.

they enjoy the right of election? In speaking of naturalization proper we have conceded that its effects do not extend to the wives and children of naturalized foreigners; this is because naturalization is a personal act, a kind of contract between the naturalized citizen and the nation which adopts him, — a contract which can avail only with regard or reference to the contracting party. Nationality, as the result of marriage and birth, constitutes a right acquired by the wife and children: the father of a family, thereafter changing his nationality, cannot in any manner deprive them of this acquired right; his naturalization, voluntary and purely personal, may not prejudice either the wife or the children of the naturalized foreigner. It is not so with regard to naturalization which results from annexation: there is no doubt but that this collective naturalization extends to the wife and children of him who changes his nationality as the result of annexation."

§ 112. "We have seen, however, that treaties give the right of election as a method or means of escaping the consequences of annexation. Individuals of age and enjoying their rights have only to fulfil certain conditions to preserve the nationality of origin. But the wife and the children have not the same capacity; the acts of the wife, concerning her status, are subordinated to the will of the husband, or at least changes are not permitted to her except by his authority. On the other hand, minor children are incapable of expressing their will: neither silence nor election may be imputed to them; for to make a valid election it is necessary to be master of one's rights."

§ 113. "With regard to minors we believe that the principles conceded in regard to ordinary naturalization should apply in cases of annexation. The child follows the status of his father from the time of his birth; *from that instant he*

has a nationality which nobody can change without his consent. Silence, as election, on the part of the father in his name may not be imputed to the child; the father is not master to dispose of the nationality of his son, in case of annexation as in every other circumstance, or at least, in order to clothe him with this right, a special law giving him this power, or an express stipulation in the treaty, would be necessary. Such is the opinion of Dalloz,[1] which has been sanctioned by a decree of the 16th of December, 1828, by the Court of Grenoble."

§ 114. The Frenchwoman who becomes an alien by marriage with a foreigner resumes the character of citizen of France from the time that she returns to France, and declares her intention to reside there with the permission of the executive of the state.[2] And Stoicesco says that it has been concluded by some authors from this that the converse of the proposition must be true, namely, that an alien woman who becomes French as the result of marriage resumes her nationality from the time the marriage is dissolved and she becomes resident abroad. But he adds that the contrary opinion has prevailed, and he cites French authorities and decrees of courts of France to this effect.[3] This author then enters upon a discussion of the cognate questions which were involved in the "Affaire Bauffremont."[4]

§ 115. By marriage with a French citizen an alien woman acquires French citizenship or nationality;[5] this result follows only in cases where the marriage is valid.[6] By the law of France the nationality of the wife of a citizen of France, thus acquired, continues after the death of the husband,[7] but the right to resume the nationality of origin, or to ac-

[1] Droits Civils, 593.
[2] Civil Code, art. 19, Stoicesco, p. 329.
[3] *Ib.* p. 329.
[4] *Ib.* pp. 329 *et seq.*
[5] Civil Code, art. 12; Stoicesco, p. 325.
[6] Stoicesco, p. 327.
[7] *Ib.* 329.

quire a new nationality, which may be exercised after dissolution of the marriage union, is recognized in modern public law and in the law of France.

§ 116. The children born of an ex-Frenchman in France, who can bring themselves within the conditions, and who desire to regain French citizenship, may have recourse to Articles 9 and 10 of the Civil Code ; they will invoke Article 9 if they reclaim the character of Frenchmen in the year following their majority ; if they have allowed this year to pass without having reclaimed the title of French citizen,[1] they will invoke Article 10. We refer to the author just cited for a full discussion of the status of children born in France of foreign parentage, and of children of a French citizen who has lost the character of Frenchman, as well as of children of a naturalized foreigner.[2]

§ 117. An interesting and instructive discussion on the conditions required by the law of France for naturalization proper may be found in the pages of a very recent French author.[3] This author considers, in the order of time, the several articles of the code and decrees of the French courts which bear upon the subject. The distinction between naturalization (*naturalisation simple*), and extraordinary naturalization (*grande naturalisation*) is pointed out, as well as the alterations of the term of residence in France, as effected by successive legislative action.

§ 118. At present the matter of naturalization in France is regulated by the laws of the 3d of December and of the 29th of June, 1867. Ordinary naturalization (*la naturalisation ordinaire*) is granted by decree of the head of the state, that is to say, by the president of the republic, to an alien

[1] Stoicesco, Etude sur la Naturalisation, p. 315.
[2] *Ib.* pp. 286–325.
[3] *Ib.* pp. 243–272.

of twenty-one years of age who solicits the character of citizen. The applicant must first obtain the authorization of the French government, to establish himself and to fix his domicile in France; he must reside in France during three years consecutively, from the day when the request for the authorization of his domicile was registered at the department of justice; after this, an administrative inquest is ordered by the government as to the moral character of the applicant. The decree of the president of the republic, granting the naturalization, is then rendered on the advice of the council of state. When all these formalities have been complied with, the alien becomes a French citizen, enjoying all the rights which citizens of France by origin or birth enjoy.

Extraordinary naturalization (*la naturalisation extraordinaire*) is that which was accorded to aliens who have rendered important services to France; who have introduced into France either an industry or useful inventions; who have brought there distinguished talents; who have built up great commercial enterprises, or who have created large agricultural establishments. Such persons may be naturalized after one year's residence from the date of establishment in France. Apart from the term of residence, applicants for extraordinary naturalization must comply with the same conditions as for ordinary naturalization.

An exception has been made since 1867, in favor of alien employés of French legations and consulates; these, though actually residing in foreign territory, may be naturalized by compliance with the other conditions required by the law for naturalization: their sojourn abroad is assimilated to residence in France.

Extraordinary naturalization (*la grande naturalisation*) no longer exists. Every act of naturalization to-day produces complete effects; the individual admitted acquires the same rights as a native Frenchman.

§ 119. Formerly letters of naturalization were issued by the sovereign power to the applicant, and publication of the fact was made in the Journal of the Laws (Bulletin des Lois). But since 1848 decrees of naturalization are rendered in the ordinary form of decrees emanating from the head of the state, and are inserted in the Bulletin des Lois; and at the same time a copy is transmitted to the alien who is naturalized, a minute is preserved among the state archives. At present the proceedings are conducted in one of the bureaux of the council of state (*la section du contentieux au conseil d'état*), and the proof results from the decree conferring the naturalization, and from its insertion in the Bulletin des Lois. The decree of the 17th of March, 1809, placed the right to confer naturalization in the number of the attributes of imperial sovereignty.

§ 120. Further consideration of the text of the same author,[1] and the authorities cited by him, leads to the following conclusions: First, that the naturalized alien obtains the same rights and privileges as if born in France; second, that the effects of naturalization date only from the moment of naturalization; third, that it is irrevocable, — that is to say that the alien, once naturalized as a citizen of France, will only lose his character as such citizen in the same way as the native Frenchman would; fourth, that naturalization produces its effects only in the future, and that it is not retroactive; fifth, the effects of naturalization are individual and personal, and concern only the individual who has obtained this favor.

It is asked, however,[2] whether the effects of the naturalization of the father should extend to the children. With regard to children conceived they benefit without doubt by

[1] Stoicesco, Etude sur la Naturalisation, pp. 272, 285.

[2] *Ib.* pp. 274 *et seq.* See also Sirey, Code Civil, Annoté, pp. 68, 69; *Ib.* Supplement, pp. 14, 15.

the naturalization of the father; it cannot be said in this case that the child conceived is reputed born; because, as has been remarked by our eminent professor, M. Bufnoir, this would be to turn against the children a principle justly intended for their advantage. MM. Aubry and Rau are of the same opinion; and they say, children born subsequent to the naturalization are French. Besides, this question cannot admit of doubt, for the reason that the nationality of the child is determined by that of its father at the moment of birth.

§ 121. "We come now to the case of children born antecedent to the naturalization of the father. With regard to these, the question was stoutly contested prior to the law of 1851: a distinction was made between the children who were minors and the children who were of age of the alien naturalized. It was admitted that the latter preserved the nationality of origin, but that the children who were minors became French from the moment that the father was naturalized; in a word, it was maintained by this system that the effects of the naturalization extended to the minor children born antecedent to the naturalization. The minor, said the advocates of this system, had not any will that availed in the eye of the law, above all to decide a question that is so important, and one which concerns status, like that of nationality; it is for this reason that the infant minor should follow the condition of his father. The nationality of the minor is as the reflection of the nationality of the father; now, when the nationality of the father changes, that of the son should change also, provided he is a minor. A second argument invoked in support of this system was that it is desirable to avoid a difference of nationality between father and children. The co-existence of two different nationalities in the persons of father and child may lead to distressing consequences; it would be very shocking, for instance, if the law should establish certain in-

capacities of succession, either on the part of the father, or on the part of the son. Add to this the greater inconvenience which would result from the co-existence of two different nationalities in the person of the parent who exercises the paternal power (*la puissance paternelle*), and in the person of the infant minor. Very respectable authors, among them Duvergier and Foelix, maintained the first system.

In the second system it was contended, on the contrary, that the effects of the naturalization of the father should not be extended to the children, whether majors or minors. Nationality, in effect, is a personal quality (character), an essential question, which touches the status of the child, and upon which the law itself has pronounced, by conferring upon him a nationality of origin. The child, says the law, has the nationality of the father; henceforth, it is for him an acquired title, of which no representative can deprive him. The father has not the right (authority) to renounce, in the name of his minor children, the benefit (privilege) of their nationality of origin. With regard to them, as long as they are minors they cannot claim the benefit of the naturalization granted to their father, without having personally fulfilled the conditions upon which this benefit (privilege) is made dependent; and much less can their will during minority avail, in the eye of the law, to decide a question so important as that of nationality. This (second) system has already prevailed in practice and in doctrine.

§ 122. The arguments in support of the first system are easy to answer. The first contention is that the child should take the nationality of the father. This rule applies at the moment of the birth of the child; but it should not lead to the inference that every change of status in the person of the father reacts upon the person of the child. With regard to the second contention, the matter is perhaps a little more serious; in fact, the co-existence of two different nationalities

in father and child is unnatural; but there is no solution which does not present some inconvenience. Even accepting the first system, this inconvenience is not gotten rid of, for it always prevails in respect of children of age at the time of naturalization of the father; the latter preserve the nationality of origin. The arguments in support of the first system are then of very little value; but before the question had been solved by legislative decision, the second system had already prevailed; d'Aguesseau in one of his briefs, Merlin, Duranton, and later Demolombe, Aubry, and Ray, and other reputable authors had upheld it."

§ 123. "It has been said that the effects of naturalization are personal and individual, and that they concern only the person who has obtained this favor." [1]

Children who are minors at the time of the naturalization of an alien in France may, on reaching majority, claim the character of citizen of France, agreeably to Article 9 of the Civil Code.[2]

The question whether the effects of naturalization of the husband, *after marriage*, extend to the wife has been much discussed in French jurisprudence.

The author just cited gives at length the conflicting views which have been presented in favor of affirmative and negative answers to the question, and concludes that the wife is not affected by the naturalization of the husband during marriage. "The husband," he says, "has no right to make his wife a foreigner without her consent. Naturalization is, as we have said, a sort of contract between the alien and the nation which adopts him. This contract cannot have any effect except with regard to the parties contracting. The wife does not then change her nationality unless she is naturalized separately." [3]

[1] Stoicesco, p. 274.
[2] *Ib.* p. 278.
[3] *Ib.* p. 284.

§ 124. The same author then proceeds to discuss "naturalization by operation of the law of France," — which he defines to be certain particular kinds of naturalization specially governed by the Code, and by virtue of which an alien may acquire the character of French citizen, by complying with certain conditions less exacting than those required by naturalization proper.[1]

There are five classes of privileged aliens who may thus become citizens of France by "*naturalisation par le bienfait de la loi*": First, children born in France of alien parents; second, children, the issue of parents who were originally French, but who have lost this character before the conception of the child; third, the alien woman who marries a Frenchman; fourth, the child of an alien subsequently naturalized; fifth, the descendants of religious fugitives.[2]

§ 125. The number of aliens (*étrangers*) — the *peregrini* of contemporary times — living in France is very large, and it is generally made up of a wealthy and intelligent population.[3] It often happens that these aliens, once settled in France, give up all idea of returning to their native land, abandon their country, and, adopting the manners and habits of the French people, so mingle with them that after a certain time it is often difficult to distinguish them. "As to this class of persons the question is asked, May they not be considered as naturalized, although they have not complied with the conditions made requisite in this respect by legislative will? Are individuals in this equivocal condition aliens, or are they French?"[4] M. Delvincourt insists that the class of individuals just described are naturalized,[5] as the result of

[1] Stoicesco, p. 285. [2] *Ib.* pp. 285, 286. [3] *Ib.* pp. 236, 237.
[4] *Ib.* p. 237.

[5] The number of Americans alone who live in Paris, and have apparently established a domicile in France, is estimated at thirty thousand. And it was to determine the status of this description of persons in relation to the United States that President Grant invited the attention of Congress.

this long occupation (*possession d'état*), by which they have lost their nationality of birth. Proudhon thinks that such aliens occupy a middle state between Frenchmen and aliens properly so-called, — a situation complex or neutre; such is the position of an alien who has renounced his country to establish himself in France, and whom Proudhon designates by the name *incola*. By such a fixture (establishment) of domicile an individual attaches himself to the customs, or rather to the life of the people in the midst of whom he finds himself, or where he discharges public duties. This alien, by origin, cannot be considered as without a country, and he cannot be placed outside of all law; it is necessary that his person, as well as his acts, should be subordinated to some legislation. Now, as he has abandoned his native or proper country, no law, except that of France, can apply to him. And Stoicesco[1] concludes, following Proudhon's system, that these aliens, so-called, are French from every point of view, except that of succession. The third system, diametrically opposed to the first, is elaborately developed by Demolombe,[2] and considers the individuals in question as aliens in the broadest signification of the word.

§ 126. "The question," says Stoicesco,[3] "has lost a little of its interest as the result of recent legislation"; and he then resumes the arguments made use of in support of the third system.[4] But it still retains some of its importance because, even in reference to civil rights, aliens are not on the same plane as citizens of France.

[1] Stoicesco, p. 239.

[2] Droit Civil, Liv. I. tit. i. ch. i, No. 172, tome I. pp. 204 *et suiv.*, edition 1874.

[3] *Ib.* p. 240.

[4] See the law of the 14th of July, which abrogates Articles 726 and 912, in the matter of succession and gifts (*de succession et de donation*); also, the law of 1867, abolishing duress (*la contrainte par corps*).

Mr. Field[1] states the existing rule as follows: —

"A person who has ceased to be a member of a nation, without having acquired another national character, is nevertheless deemed to be a member of the nation to which he last belonged, except so far as his right and duties within its territory, or in relation to such nation, are concerned." Such persons are said to number many thousands in France.[2] By the French law they have a French status if domiciled there,[3] even if domiciled without authority,[4] but their national character is uncertain.[5] Valette (*sur* Proudhon, tome 1, p. 200) is of opinion that if domiciled in France they are French. But this is denied by Boileux.[6]

§ 127. What has been described, too often loosely and inaccurately, as "double allegiance" was noticed by nearly all of the earlier publicists. But "double allegiance," within proper limitation of the expression, is not, and never was intended to be understood, as a synonyme for "double citizenship or nationality."[7]

"The law of England, and of civilized countries, ascribes to each individual at his birth two distinct legal states or conditions, — one by virtue of which he becomes the subject of some particular country, binding him by the tie of natural allegiance, and which may be called his political status; another, by virtue of which he has ascribed to him the character of a citizen of some particular country, and, as such, is

[1] International Code, second edition, p. 130.

[2] Heffter, Droit International, sect. 38, subd. 1, note 2.

[3] 1 Boileux, p. 58. [4] *Ib.* p. 63. [5] Heffter, above.

[6] 1 Boileux, pp. 52, 62. See Marcel Michel, De la Capacité requise pour l'Acquisition et la Perte de la Qualité Français. Aix, 1878.

[7] "What is sometimes called local and temporary allegiance, but is more properly termed obedience, is due to every government from aliens and strangers sojourning within its jurisdiction." Argument of Charles O'Conor in the case of the Brig-of-War General Armstrong, before the U. S. Court of Claims at Washington, D. C., Nov. 17, 1855. — *Great Speeches by Great Lawyers*, Snyder, p. 191.

possessed of certain municipal rights, and subject to certain obligations, which latter character is the civil status or condition of the individual, and may be quite different from his political status. The political status may depend on different laws in different countries, whereas the civil status is governed universally by one simple principle, namely, that of domicile, which is the criterion established by law for the purpose of determining civil status; for it is on this basis that the personal rights of a party, that is to say, the law which determines his majority or minority, his marriage, succession, testacy or intestacy, must depend."[1]

Allegiance is defined by Sir E. Coke to be "a true and faithful obedience of the subject due his sovereign."[2]

In the words of Mr. Justice Story, "Allegiance is nothing more than the tie or duty of obedience of a subject to the sovereign under whose protection he is; and allegiance by birth is that which arises from being born within the dominions and under the protection of a particular sovereign. Two things usually occur to create citizenship: first, birth, locally within the dominions of the sovereign; second, birth, within the protection and obedience, or in other words, within the legiance of the sovereign. That is, the party must be born within a place where the sovereign is, at the time, in full possession and exercise of his power, and the party must also, at his birth, derive protection from, and consequently owe obedience or allegiance to, the sovereign as such *de facto*. There are some exceptions which are founded upon peculiar reasons, and which, indeed, illustrate and confirm the general doctrine."[3]

The customary law of England formerly distinguished between national and local allegiance. Under the law, the rule as to natural allegiance was expressed in the maxim,

[1] Per Lord Westbury, Udny *v.* Udny, 1 H. L. Sc. p. 441. See Moorhouse *v.* Lord, 10 H. L. Cas. 272; Shaw *v.* Gould, L. R. 3 H. L. 55, App. 457.

[2] Calvin's Case, Rep. 5.

[3] 3 Peters (U. S. R.), 155.

"Nemo patriam in qua natus est exuere nec legeantio debitum ejurare possit." And this maxim, which originated in feudal times, had its warrant in feudal customs, which recognized and sustained a military vassalage. It is a doctrine which was never countenanced by modern publicists. But under provisions of a recent act of Parliament, even Great Britain abandons the doctrine of perpetual allegiance, recognizes the right of expatriation, makes provision for the naturalization of natural-born British subjects, and facilitates the naturalization of aliens as British subjects.[1]

Anciently, by the common law of England, local allegiance was such as was due from an alien or stranger born, whilst he continued within the dominion and protection of the Crown; but it was merely of a temporary nature, and ceased the instant such stranger transferred himself from this kingdom to another.

In the matter of nationality the legislation and practice of Great Britain is now in substantial accord with the legislation and practice of continental nations and the United States.

§ 128. The existence of a *permanent* allegiance (which describes the character of obligation a citizen or subject owes the state or nation of which he is a member) and *temporary* allegiance (which describes the obedience due by an alien to the laws of the jurisdiction in which he happens to be commorant) is everywhere recognized; and the distinction between the two is well settled.

"During the residence of *aliens* amongst us they owe local allegiance."[2]

The whole extent to which the doctrine of double allegiance may be legitimately carried is well expressed by Blunt-

[1] 33 Vict. ch. xiv. See, also, Treaty between United States and Great Britain, May 13, 1870.

[2] Kent, Commentaries, Lecture IV. p. 64.

schli: "Certain persons may, in rare instances, be under the jurisdiction of two different states, or even a greater number of states. In case of conflict, the preference will be given to the state in which the individual or family in question have their domicile; their rights in the states where they do not reside will be considered as suspended."[1]

If the oath of allegiance is the first tie which binds the citizen to the state, it is evident that the individual cannot appeal (*appeler*) simultaneously to two sovereignties, to two distinct nationalities. Man is free in regard to the civil duties to which he is willing to submit himself; but the very nature of things does not permit him to multiply moral and political obligations essentially irreconcilable.

§ 129. Every individual must be a member of some political society; but he may not have more than a single citizenship or national character.

It would seem to be the doctrine of modern public law, that though a person may *apparently* have a double citizenship or nationality, yet whenever circumstances arise which make two citizenships inconsistent, he must elect and determine which one he will prefer.[2]

The existing rule may be stated as follows: "A person who has ceased to be a member of a nation, without having acquired another national character, is nevertheless deemed to be a member of the nation to which he last belonged, except so far as his rights and duties within its territory, or in relation to such nation, are concerned."[3]

It is by no means an easy matter, even at this day, to shrink from the duties or to yield the privileges of citizenship, whether native or acquired; and it is still necessary to con-

[1] Bluntschli, International Law Codified, sect. 394.

[2] Westlake's Private International Law, p. 21, sect. 22; 1 Boileux, pp. 52, 62; Zouche, cited *supra*. And that this is the only consistent, rational, and philosophic doctrine, see Field's Int. Code, second edition, pp. 129, 130.

[3] Field, Int. Code, second edition, p. 130, note.

form to certain rules and regulations, which are substantially the same among civilized states.

It is sometimes asked, "May a citizen of a state, by whose laws expatriation is declared to be an inalienable right, abandon his country, without acquiring a citizenship in another state?" The writer thinks not.

"A man without a country," may be an entertaining subject in fiction; but the public law of modern states is not disposed to recognize such a nondescript. A North American Indian, born in the wilderness, is probably the nearest approach, in modern times and in actual life, to such conception.

Any doctrine which recognizes a double citizenship or double nationality attempts to perpetuate a political hybrid, which is as abnormal and monstrous as its prototype in the natural world: and the expression even must disappear as soon as that wise and judicious system which Savigny almost created becomes universal. The basis of this system is the principle which insists that there should be a harmony rather than a conflict of laws. The contrary principle, which seeks to perpetuate a conflict of laws, is a relic of barbarism, and is rapidly disappearing from view.

§ 130. After a review of the whole subject, the first proposition which the late Chief Justice Cockburn laid down in his conclusion was expressed in the following language: "That under a sound system of international law, such a thing as a double nationality should not be suffered to exist."[1]

In an instructive and suggestive paper on "The Legal Position of the Indian," it is insisted that the Indian is not a person within the meaning of the [original] constitution, or the earlier amendments, and that while, as against individuals, he is completely protected, as against Congress he is helpless.

[1] Nationality, pp. 214, 215.

Congress may break its treaties with him, as it may repeal a statute (Cherokee Tobacco, 11 Wall. 616).[1]

The author of the article just quoted points out further that the Indian has not been made a citizen of the United States as a result of the adoption of the Fourteenth Amendment. In concluding his discussion of the question, the author says: "If an Indian is made a person subject to the laws of our country, we may look for a series of cases arising under the Fourteenth Amendment, and the legislation enacted thereunder, which will teach the next generation a wholly new conception of the division of powers between our national government and the state governments."

A different view from that expressed in the article just cited, as to the actual legal position of the Indian in the United States, has been taken in a recent debate in the Senate of the United States.[2] It will be observed, however, that several senators, whose opinions are worthy of consideration, spoke with a degree of caution on the subject. The exposition of law in the opinion rendered by a majority of the Supreme Court of the United States in the Cherokee Tobacco Case, never seemed to the writer satisfactory. The writer's conception of the relations and obligations of the United States, *under treaty stipulations with the Indians*, is more in accord with the views entertained by the dissenting justice.[3] It is the habit to describe the Indians as the "wards" of the nation; but when the nation enters into solemn compacts and agreements, like treaties, it must be as equals that the two contracting parties come together.

The writer has elsewhere expressed his opinion in respect to the obligation of treaty stipulations.[4]

[1] The American Law Review, January, 1881.
[2] Congressional Record, Washington, D. C., Jan. 26 and 27, 1881.
[3] Mr. Justice Bradley.
[4] Washington Law Reporter, Vol. VII., No. 7, pp. 52, 53.

PART IV.

§ 131. A MEMBER of a free commonwealth is called a citizen. "Aristotle defines a citizen to be one who participates in the legislative and judicial authority of the state." But in every state there are two classes of citizens, — those who are permitted to participate in the government, and those who are not. All persons born within the state, irrespective of age, sex, or condition, are presumptively citizens; others may be admitted to citizenship either by special legislative enactment, or by some form of naturalization under general laws. The children of citizens born while their parents are abroad temporarily, or on the public service, are also citizens. But those only exercise the right of suffrage who, in addition to citizenship, have such other qualifications as the law may have prescribed.

In the United States, by the Fourteenth Amendment to the Constitution, all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. This amendment put at rest the disputed question whether the freedmen and other blacks were citizens; but it does not embrace Indians who still retain their tribal relations, and who are, therefore, only in a much qualified sense, subject to the jurisdiction of the United States. Sect. 2, Art. 4, of the Constitution, construed in Ward *v.* Maryland, 12 Wallace, 418, provides that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states"; and the Fourteenth Amendment prohibits the states from abridging the privileges and immunities of cit-

izens of the United States. This amendment was construed in the New Orleans Slaughter House Cases, decided by the Supreme Court of the United States in April, 1873, in which it was shown that the privileges and immunities which belong to a citizen of a state, and those which pertain to a citizen of the United States, are not the same, and that the latter only are protected by the Fourteenth Amendment.[1]

The term "citizen," as understood in our [American] law, is precisely analogous to the term "subject" in the common law; and the change of phrase has entirely resulted from the change of government. The sovereignty has been changed from one man to the collective body of the people, and he who before was *a subject of the king is now a citizen of the state*.[2]

The American use of the term "citizen" is indistinct. A citizenship of a particular state is recognized, as well as one of the Union.[3]

Some years ago an American commentator observed, that it was difficult to say, after the title of *citizenship* was established, what were the rights which it conferred in the United States;[4] but the Supreme Court of the United States has recently pointed out some of these rights.[5] The court did not, however, attempt to enumerate or to define all the rights or powers that recent amendments and congressional enactments had conferred.

§ 132. The political rights of a citizen of the United States are defined, established, and protected by the Constitution of the United States and the constitutions of the several states.

[1] See Story's Commentary on the Constitution, fourth ed., ch. 47, and appendix to Vol. II. (The American Encyclopædia, word "citizen.")

[2] The State *v.* Manuel, 4 Dev. & Batt. 26; Paschal, Annotated Constitution, p. 274.

[3] Westlake, Int. Law, p. 25.

[4] Lawrence and Wheaton's Int. Law, appendix, p. 903.

[5] Slaughter House Cases, 16 Wall. (U. S.) Rep. 36; Crandall *v.* Lee, 6 Wall. 36.

"A constitution is that supreme law which the nation itself makes, as the condition and the limitation of all the powers it will thereafter impart to its political servants. It is the guide which it gives to them all. It is the expression of the deliberate determination of the whole people that the rights, which it believes to lie at the foundation of all right, shall ever be preserved, — that certain principles, which are to be as the life and essence of all law, shall ever be maintained; and it divides and defines, and yet connects together, all the organic powers and functions of the state. It governs all legislative bodies in the exercise of their functions, for it is the law of the nation. And when the constitution is thus formed it is thereafter the supreme law of every citizen of the state, be he high or low, be it his office to make, to execute, or to judge of law, or only to assist in laying these duties upon others. To every man, and to every man alike, it is a supreme law.

"The imperfect imitations of a constitution on the continent of Europe, and on this continent south of the Union, were never the expression or the creation of the deliberate reason and will of the people; they were never what constitutions should be, and nearly all of them have been torn into tatters." [1]

"A constitution, in the American sense of the word, is a written instrument by which the fundamental powers of the government are established, limited, and defined, and by which these powers are distributed among several departments for their more safe and useful exercise for the benefit of the body politic." [2]

§ 133. The personal rights of a citizen of the United States have been, in a recent discussion, considered [3] under

[1] Parsons's Rights of a Citizen of the United States, p. 3.

[2] Mr. Justice Miller (Supreme Court of the United States), Lecture before Law College, University of Georgetown.

[3] Parsons's Rights of a Citizen, Book II. p. 171.

seven heads: first, the right to personal liberty; second, the right to personal security; third, the right to freedom of speech and writing; fourth, the right to freedom of religious faith and profession; fifth, military rights and duties; sixth, the rights and duties of suffrage; seventh, the rights and duties growing out of the domestic relations.

§ 134. Though there had been, theretofore, many cases, some of which are historic, in which naturalized American citizens, abroad or on the high seas, had secured the intervention of the government of the United States in behalf of life, liberty, and property, and although certain administrations at Washington [1] had manifested vigilance and zeal in asserting this protection, it was not until the year 1868 that Congress formally passed an act declaratory of the obligation of the United States in this respect.[2] But the act of Congress, July 27, 1868, is, so far as the right of expatriation was concerned, only declaratory of what was and is now the doctrine of the United States. This right of expatriation had long before been conceded by the continental nations, as will appear from the authorities to be cited hereafter; and since the French revolution of 1789 it has been solemnly proclaimed and reiterated throughout the continent of Europe.

During the discussion of the act in the Senate of the United States, a member of that body declared himself opposed to the preamble, on the ground that it was unnecessary and superfluous, because such a proposition was not only fundamental in the Constitution of the United States, but had long been an axiomatic principle, announced by publicists and jurists from the earliest periods, and for many years it had been sanctioned by the nations of Europe.

[1] Notably the administration of President Pierce, when Mr. Marcy, as Secretary of State, was intrusted with the conduct of foreign relations.

[2] An Act concerning the Rights of American Citizens in Foreign States, 15 Stat. at Large, 223, 224.

This act declares in terms that expatriation is a natural and inherent right of all people, and that naturalized citizens shall be entitled to and shall receive the protection of persons and property that is accorded to native citizens in like situations and circumstances. The rapid increase in the immigration of foreign-born citizens and subjects to the United States, and the corresponding addition in the number of naturalized citizens which naturally followed, resulted in numberless controversies between states growing out of questions touching expatriation, naturalization, and change of allegiance. These controversies were constantly recurring, and in 1873 the President of the United States addressed a communication to each head of an executive department, requesting his opinion in writing to a number of questions suggested by these controversies. Answers to these inquiries were given at length by the several members of the cabinet.[1]

§ 135. It was provided in the act defining citizenship of Virginia that "All white persons born within the territory, and all who have resided therein two years next before the passing of this act, and all who shall hereafter migrate into the same, other than alien enemies, and shall take prescribed oath before court of record that they intend to reside therein, and, moreover, shall give assurance of fidelity to the commonwealth," shall be deemed "citizens." A section of this act asserted the right of expatriation, and indicated how it should be exercised, as also what persons were deemed aliens.[2] This act was drawn by Jefferson, and was presented in the house of delegates by George Mason.[3]

§ 136. But while this act of Congress[4] only declared what had long been the boasted doctrine of the United States, it

[1] Foreign Relations of the United States, 1873, Vol. XI. pp. 1177 *et seq.*, Government Printing Office, Washington, D. C.

[2] Act June 26, 1779, 10 Statutes of Virginia, Vol. X. pp. 129, 130.

[3] Jefferson's Correspondence, Vol. IV. p. 7.

[4] July 27, 1868.

must be admitted that the occasions have been too frequent in which the Government of the United States has hesitated, or neglected, to protect sufficiently the persons and rights of naturalized citizens abroad. The measure and character of protection — when it was extended — was dependent altogether upon the character of the executive or of the cabinet, rather than upon any well-defined and consistent action as the result of a pronounced foreign policy. Indeed, there have been times when it would appear as if the country had no foreign policy in respect to the protection of the persons and rights of American citizens abroad. On occasions the attitude of the United States towards her citizens abroad has been discreditable as well as pusillanimous, and it is usually in mortifying contrast with the conduct of Great Britain in respect of her subjects. So vigilant and active has been the intervention of Her Majesty's Government on behalf of her subjects the world over that it has given origin to the apothegm: "A British gunboat is always within one hundred miles of every invasion of British rights or interests."

The repeated instances in which the persons and the interests of naturalized American citizens have been assailed very recently, demands, and should receive, the serious attention of the executive and of Congress. The principal offenders, in this respect, in late years have been Spain and Germany; and the large number of cases in which these states have interfered with American rights and interests, abroad and at sea, seems to indicate the pursuit of a settled policy, which virtually disregards, or defies, the claim to American protection.[1] The most serious conflicts in recent years, growing out of the protection to naturalized American citizens, have been between the United States and Germany, and the United States and Spain.

[1] Foreign Relations of the United States, tit. Spain and Germany, 1879; Proceedings of the United States and Spanish Commission, Washington, D. C.

§ 137. Under the law and practice of modern states, citizenship, or nationality, is generally the result either (*a*) of birth within the jurisdiction of the state, or (*b*) of adoption by the state. As to the first, the rule is comparatively simple, and may be readily applied; as to the second, the method is by naturalization of an individual, of a community, a people, a province, or a state, or by a change of national domicile on the part of the individual, — instances of which will be hereafter mentioned. The difficulty in all the controversies arising out of a change of national domicile results from the absence of any fixed rule as to what evidence will be held to be conclusive of the fact.

In addition to these methods, as already observed, in the case of women, the original citizenship or nationality is acquired or lost as an incident of marriage.

It follows, of course, under the same law and practice, that the original citizenship or nationality is lost by naturalization, whether individual or collective, and sometimes by a change of national domicile. "The people of the states of the American Union are, and have been since the declaration of their independence, subject to two governments, — that of the individual states and a federal or national government."[1] An immediate result of the complex character of the government of the United States of America, and, until recently at least, the generally admitted existence contemporaneously of two separate and distinct sovereignties, governments, or autonomies, was a dual citizenship, — a citizenship of the United States and a citizenship of some particular state. This twofold citizenship has been recognized since the formation of the existing government,[2] and a considerable portion of the inhabitants are invested with this dual char-

[1] "The Monarchical Principle in our Constitution." — *North American Review*, November, 1880.

[2] The Dred Scott Case, 19 How. U. S. S. C. Rep. p. 393; Slaughter House Cases, 16 Wall. U. S. S. C. Rep. 36.

acter. The residents of the several territories and persons domiciled in the District of Columbia furnish instances, which are exceptional, of citizens of the United States whose citizenship may be said to be *single*.[1] Inconvenience and embarrassment have arisen already, and will, no doubt, continue to arise, from this twofold character, and it has heretofore been the subject of criticism by foreign juridical writers, who have found the existence of this dual character confusing and inconsistent.[2] Such criticism, however, has its foundation either in a misconception of the structure or working of our government, or in a faulty and erroneous application of terms in respect to our political system.

§ 138. The reader will find by reference to preceding pages of this treatise that there existed a corresponding dual citizenship under the Roman system, as follows, to wit, citizenship of a municipality within territorial jurisdiction as distinct from citizenship of the republic. It should be observed, however, that the analogy just indicated is more apparent and much closer in the relations of the several states to the United States government *since the adoption of recent amendments to the Constitution.*

That the co-existence of such dual sovereignties within the same territory (an almost illimitable reproduction or repetition, in fact, of *imperium in imperio*) was inconsistent and illogical was the constant and iterated contention of one school of American statesmen. It was in-

[1] The residents of the District of Columbia do not enjoy the right of suffrage, and are denied the ordinary rights and privileges of citizens of the United States, unless they retain a citizenship in some state of the Union. Senator Benton once described the residents of the cities of Washington and Georgetown as "political eunuchs." See Addresses of Thomas J. Durant on the subject of Citizenship, and the right of the people of the District to exercise the elective franchise, before a meeting of citizens at Washington, D. C., Jan. 11, 1875, and Jan. 3, 1880.

[2] Westlake, Int. Law, p. 3.

evitable that the form of a tentative government of this character, which was admittedly only a compromise measure, would result, sooner or later, in the aggrandizement of the federal, or the independence of the state power. And this was confidently predicted from an early period.[1]

It has been said, with sufficient accuracy and truth, that the government of the United States has passed through three forms: 1, the revolutionary; 2, the confederate; 3, the constitutional; and that the first and the third proceeded equally from the people in their original capacity.

It is beyond the scope of this discussion to enter into the fruitful fields which are naturally suggested by reflection upon the above; but the student of political philosophy will find much occupation in the contemplation of this subject at this time.

§ 139. One of the serious inconveniences, and, it may be, one of the embarrassments incident in part to a dual citizenship in the United States, is the presence of two systems of law in every state in the Union; and, as has been said, "Notwithstanding the theory that the federal courts in the various circuits follow the rules of law laid down by the state courts, they are absolutely bound by the decisions of the Supreme Court of the United States."[2]

The advocates of an enlargement of federal, and of a corresponding curtailment of state powers are encouraged to believe, or affect to believe, that one of the immediate results of the adoption of their views will be something like homogeneity in the jurisprudence administered throughout the United States.

The several acts of Congress providing for the removal of causes from state to federal courts, and the construction put

[1] The Federalist; Rights of a Citizen, Parsons, p. 46; Debates in the Convention.

[2] The Nation, No. 807, New York.

upon these acts by superior federal courts, have already brought about radical changes in this connection.[1]

§ 140. It need hardly be repeated here that this tendency towards a homogeneous character in the administration of law is only one of the manifestations of radical mutation in the functional relations of the state and federal governments.

An illustration of the growing supremacy of the general government is apparent in the nomenclature in daily use, which serves to symbolize political ideas and sentiments. For many years Washington City was recognized as the *capital of the United States*, the *federal capital*. Recently it has become the *national capital*, the capital of the Nation. And organs and orators write Nation large and state small.

§ 141. The contest between the advocates of a centralized federal power, and the supporters of independent states with local self-government, has been carried on during years of peace and war; and — whether for good or ill, time alone must determine — the doctrine of centralization (an *European* idea) has prevailed; and the doctrine of independent and sovereign autonomies, with local self-government (the *American* idea), has been condemned by an apparent majority.

§ 142. Under an estimate which may approximate the correct figure, the sovereign power in the United States (meaning the persons who exercise, or are entitled to exercise, the right of franchise) is invested in and shared by about 9,000,000 persons; and yet it is the habitual practice to speak of *universal* suffrage. Of this number of the elect, some millions are said to be densely ignorant, and without property; while of those deprived of the franchise, there are probably millions who are at once intelligent, and the proprietors of great estates.[2] By the last annual return made to the House of Com-

[1] See Removal of Causes, by John F. Dillon. See Stone *v.* Sargent, Supreme Judicial Court of Massachusetts, Op. by Gray, C. J., in American Law Register, January, 1881, p. 24.

[2] Pres. Garfield's Inaug. Address; U. S. Census (Education Statistics), 1881.

mons, the number of qualified electors in the United Kingdom was 2,999,229, of whom 1,148,529 were in the counties, 1,822,708 in the boroughs, and 27,992 in the universities. The aggregate number of votes cast last year was 2,088,000.

The population of the Roman republic, at the accession of Augustus, was 120,000,000; half of these were *slaves*, 40,000,000 were *tributaries* and *freedmen*, only 20,000,000 enjoyed the full rights of *citizens*.

There were 20,000 male citizens of the Athenian commonwealth, and 400,000 slaves.

It has been sometimes suggested that suffrage should be restricted to the virtuous and intelligent; but the proposition has not yet met with much favor or encouragement at the hands of "practical politicians" in the United States.

The number of alien passengers arrived in the United States from foreign countries from Oct. 1, 1819, to Dec. 31, 1870, was 6,832,764.

It is estimated that the number of alien passengers arrived in the United States from 1789 to 1820 amounted to 250,000.[1]

There are 43,475,506 native Americans and 6,667,360 persons of foreign birth. The number of foreign-born persons to each 100,000 natives is 15,309, against 16,875 ten years ago. The census does not give the proportion of aliens to natives holding office, but such a table would show a very active catering for "the foreign vote" on the part of both political organizations.

There are 43,404,871 whites to 6,577,151 colored. (Freedom has largely increased the fecundity of the blacks.) The number of colored persons to each 100,000 whites is 15,153, against 14,528 in 1870.[2]

[1] Appendix to Quarterly Report, Bureau of Statistics, United States, 1879–1880, Washington, D. C.

[2] The year 1880 is likely to be a memorable one in the annals of immigration. It was in that year that the emigrant tide from Europe to these shores touched the highest mark ever known. In 1880 320,800 aliens were landed at Castle Garden. The greatest number reached in any preceding year

There are of Indians and half-breeds, not in tribal relations on reservations under the care of the government, 65,122; Chinese, 105,463; other Asiatics, 255.

It is not likely that the next census will show a large increase of Asiatics, for our people have made up their minds, with substantial unanimity, that immigration of that sort must be checked.

§ 143. "There are two kinds of citizenship under our political system of government, — federal and state; and suffrage is an attribute of the latter, exercisible in each state under the conditions and qualifications imposed by its constitution. The only restriction on the power of the state to prescribe these conditions is that imposed by the Fifteenth Amendment to the Constitution of the United States, which provides that the conditions shall not be based on considerations of race, color, or previous servitude. The state remains free to prescribe such qualifications for suffrage as it may please, provided they apply equally to persons of all races and colors." — NARR, *Suffrage and Elections.*[1]

"The doctrine that the recent amendments to the federal Constitution do not confer the right of suffrage upon any one, and that the right to vote in the states comes from the state, has been repeatedly decided by the Supreme Court of the United States."[2]

The states still retain the power of discriminating in the

was 319,200 in 1854. These figures are for New York alone, the great gate through which aliens enter the country. Including the arrivals at other ports, the whole number of European emigrants added to the population of the United States in 1880 was well on to half a million.

[1] United States *v.* Cruikshank, 2 Otto (U. S. Sup. Ct. R.), 542; *In re* Wehlitz, 16 Wis. 463; Dred Scott Case, 19 How. (U. S. R.) 405.

United States *v.* Reese *et al.*, 2 Otto (U. S. Sup. Ct. R.), 214; Anderson *v.* Baker *et al.*, 23 Md. 531; Sprague *v.* Houghton, 3 Ill. 377.

[2] Minor *v.* Happerset, 21 Wall. (U. S. R.) 178; The United States *v.* Reese *et al.*, 2 Otto (U. S. Sup. Ct. R.), 214; The United States *v.* Cruikshank *et al.*, 2 Otto (U. S. Sup. Ct. R.), 542.

right to vote on account of any cause other than those specified in the constitutional amendments.[1]

"Among the absolute, unqualified rights of the states is that of regulating the elective franchise." [2]

§ 144. "It is quite clear, then," says a majority of the Supreme Court of the United States, through Miller, J.,[3] "that there is a citizenship of the United States, and a citizenship of a state, which are distinct from each other, and which depend upon different characteristics or circumstances in the individual.

[1] *Ib.*; Van Valkenburg *v.* Brown, 43 Cal. 43; Anthony *v.* Halderman, 7 Kan. 50; 2 Abbott, U. S. 120.

[2] Anderson *v.* Baker, Maryland Court of Appeals, 23 Md. 531.

The following resolutions were adopted by the National Woman's Suffrage Association at the last annual meeting in Washington, D. C.: —

"*Whereas*, woman's demand for suffrage is simply a demand to exercise the right of self-government; to make for herself the same experiment man inaugurated for himself in '76; and whereas the struggle of every human soul from the cradle to the grave is one prolonged declaration in favor of the rights to govern one's self, — therefore, Resolved, that suffrage, or self-government, is a national inalienable right, and not a privilege that any government can confer or justly withhold. Resolved, that we are a nation and not a confederacy of states. We are all citizens first of the United States, and second of the states wherein we reside; hence the right of self-government should be guaranteed by the national constitution to all citizens; that with the ballot in their own right hands they may protect themselves everywhere under our flag. Resolved, that the women of this nation have not as much to fear from a 'solid South' as from a 'white male dynasty' in which they have no representation.

"*Whereas*, a party must have some vital issue to give it life, and whereas the two great political parties are alike divided on finance, free trade, and labor reform, — therefore, Resolved, that the party that would triumph in 1884 would be wise to place a woman-suffrage plank in its platform, — the most important question of human rights now before the people for consideration. Resolved, that to exempt the clergy and church property from taxation, while laboring men and women must bear the added burden, is to recognize a privileged order in union of church and state, an old monarchal idea opposed to the secular nature of our government. Resolved, that it is the duty of Congress to submit to the several states a constitutional amendment securing to woman citizens the right of suffrage, and before adjourning to pass the bill now on the calendar providing a committee to consider the rights of women."

[3] 16 Wall. pp. 36–83, Oct. Term, 1872.

"We think these distinctions, and their explicit recognition in this amendment, of great weight in this argument, because the next paragraph of this same section, which is the one mainly relied on by the plaintiffs in error, speaks only of privileges and immunities of citizens of the United States, and does not speak of those of citizens of the several states. The argument, however, in favor of plaintiffs rests wholly on the assumption that the citizenship is the same, and the privileges and immunities guaranteed by the clause are the same.

"The language is, 'No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of *the United States*.' It is a little remarkable, if this clause was intended as a protection to the citizen of a state against the legislative power of his own state, that the words 'citizen of the state' should be left out when it is so carefully used, and used in contradistinction to 'citizens of the United States,' in the very sentence which precedes it. It is too clear for argument that the change in phraseology was adopted understandingly and with a purpose.

"Of the privileges and immunities of the citizen of the United States, and of the privileges and immunities of the citizen of the state, and what they respectively are, we will presently consider; but we wish to state here that it is only the former which are placed by this clause under the protection of the federal Constitution, and that the latter, whatever they may be, are not intended to have any additional protection by this paragraph of the amendment.

"If, then, there is a difference between the privileges and immunities belonging to a citizen of the United States as such, and those belonging to the citizen of the state as such, the latter must rest for their security and protection where they have heretofore rested, for they are not embraced by this paragraph of the amendment.

"But lest it should be said that no such privileges and im-

munities are to be found if those we have been considering are excluded, we venture to suggest some which owe their existence to the federal government, its national character, its Constitution, or its laws.

"One of these is well described in the case of Crandall *v.* Nevada, 6 Wall. 36. It is said to be the right of the citizen of this great country, protected by implied guaranties of its Constitution, 'to come to the seat of government to *assert* any claim he may have upon that government, to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions. He has the right of free access to its sea-ports, through which all operations of foreign commerce are conducted, to the sub-treasuries, land-offices, and courts of justice in the several states.' And quoting from the language of Chief Justice Taney in another case, it is said, '*That for all the great purposes for which the federal government* was established, we are one people, with one common country; *we are all citizens of the United States*'; and it is as such citizens that their rights are supported in this court in Crandall *v.* Nevada.

"Another privilege of a citizen of the United States is to demand the care and protection of the federal government over his life, liberty, and property when on the high seas or within the jurisdiction of a foreign government. Of this there can be no doubt, nor that the right depends upon his character as a citizen of the United States. The right to peaceably assemble and petition for redress of grievances, the privilege of the writ of *habeas corpus*, are rights of the citizen guaranteed by the federal Constitution. The right to use the navigable waters of the United States, however they may penetrate the territory of the several states, all rights secured to our citizens by treaties with foreign nations, are dependent upon citizenship of the United States and not citizenship of a state. One of these privileges is conferred by the very article under consideration. It is that a citizen of the United

States can, of his own volition, become a citizen of any state of the Union by a *bona fide* residence therein, with the same rights as other citizens of that state. To these may be added the rights secured by the thirteenth and fifteenth articles of amendment, and by the other clause of the fourteenth, next to be considered.

"But it is useless to pursue this branch of the inquiry, since we are of opinion that the rights claimed by these plaintiffs in error, if they have any existence, are not privileges and immunities of citizens of the United States within the meaning of the clause of the Fourteenth Amendment under consideration." [1]

In these several opinions the expressions, "rights," "privileges," and "immunities" of citizens of the United States are considered at length, and carefully construed.[2]

§ 145. In the case of Cruikshank, decided October Term, 1875,[3] the Supreme Court said, "Citizens are the members of the political community to which they belong. They are the people who compose the community, and who, in their associated capacity, have established or submitted themselves to the dominion of a government for the promotion of their general welfare and the protection of their individual as well as their collective rights. The duty of a government to afford protection is limited always by the power it possesses for that purpose.

"There is in our political system a government of each of the several states and a government of the United States. Each is distinct from the others, and has citizens of its own,

[1] See opinions of Field, Bradley, Swayne, JJ., dissenting, where the views of the minority are expressed *in extenso*, and the history of the several amendments are recited or alluded to. *Ib.* pp. 83–130.

[2] Compare with opinion and dissents in above case, Bradwell *v.* State, 16 Wall. 130; United States *v.* Cruikshank, 92 U. S. p. 542; Tennessee *v.* Davis; Strauder *v.* West Virginia; Virginia *v.* Rives; *Ex parte* Virginia; *Ex parte* Siebold; *Ex parte* Clarke, 100 U. S. Rep. pp. 257–422.

[3] 92 U. S. Rep. p. 542.

who owe it allegiance, and whose rights, within its jurisdiction, it must protect. The same person may be at the same time a citizen of the United States and a citizen of a state; but his rights of citizenship under one of these governments will be different from those he has under the other. The government of the United States, although it is, within the scope of its powers, supreme and beyond the states, can neither grant nor secure to its citizens rights or privileges which are not expressly or by implication placed under its jurisdiction. All that cannot be so granted or secured are left to the exclusive protection of the states.

"The right of the people peaceably to assemble for lawful purposes, with the obligation on the part of the states to afford protection, existed long before the adoption of the Constitution. The protection of its enjoyment was not, though, intrusted to the federal government: the people must look to the states where the power for that purpose was originally and still remains. The right to bear arms, also, is not protected by the Constitution: it is a matter of state regulation.

"The right of the people peaceably to assemble, for the purpose of petitioning Congress for a redress of grievances, or for anything else connected with the powers and duties of national government, is an attribute of national citizenship, and, as such, under the protection of and guaranteed by the United States. The very idea of a government, republican in form, implies that right, and an invasion of it presents a case within the sovereignty of the United States.

"Sovereignty, for the protection of the rights of life and personal liberty within the respective states, rests alone with the states.

"The Fourteenth Amendment prohibits a state from depriving any person of life, liberty, or property, without due process of law, and from denying to any person within its jurisdiction the equal protection of the laws; but it adds

nothing to the rights of one citizen as against another. It simply furnishes an additional guaranty against any encroachment by the states upon the fundamental rights which belong to every citizen as a member of society. The duty of protecting all its citizens in the enjoyment of an equality of rights was originally assumed by the states, and it still remains there. The only obligation resting upon the United States is to see that the states do not deny the right. This the amendment guarantees, but no more. The power of the national government is limited to the enforcement of this guaranty.

"Rights and immunities created by, or dependent upon, the Constitution of the United States, can be protected by Congress. The form and manner of that protection may be such as Congress, in the legitimate exercise of legislative discretion, shall provide, and may be varied to meet the necessities of a particular right.

"The Fifteenth Amendment does not confer the right of suffrage, — that comes from the states; but it invests citizens of the United States with the right of exemption from discrimination in the exercise of the elective franchise, on account of their race, color, or previous condition of servitude, and empowers Congress to enforce that right by 'appropriate legislation.' The power of Congress to legislate at all upon the subject of voting at state elections rests upon this amendment, and can be exercised by providing a punishment only when the wrongful refusal to receive the vote of a qualified elector at such elections is because of his race, color, or previous condition of servitude."[1]

§ 146. The distinction between political privileges (or rights) and civil rights, heretofore described, has been frequently noticed by the federal courts. The relation of the

[1] United States *v.* Reese, 92 U. S. Rep. 214; United States *v.* Crosby, 1 Hughes (U. S. Circuit Court), 448; United States *v.* Canter, 2 Bond (U. S. Circuit Court), 389.

federal to the state government in this connection has also been pointed out. Citizenship and the right to vote are neither identical nor inseparable. The constitution of Minnesota, although it authorizes resident unnaturalized foreigners to vote at state elections and hold office, does not make them citizens of the state; and such persons may remove causes to the Circuit Court of the United States, on the ground that they are aliens, although they have resided in the state for many years, and voted at elections, as authorized by the state constitution, or held office under the laws of the state.[1]

While it is true that citizenship of the United States, or of a state of the Union, does not necessarily include the right to vote or to hold office, yet the exercise of the privilege of suffrage is a good test of the existence of citizenship in a state or in the United States, and it may constitute *prima facie* evidence of citizenship. A state cannot make a subject of a foreign government a citizen of the United States. This can be done only in the mode provided by the naturalization laws of Congress.[2] Nor can a state impose the rights and duties of citizenship upon aliens who do not choose to take them.[3]

§ 147. The constitutions of nearly all the States concede to naturalized citizens of the United States, who may take up their residence within the states, the same privileges as are enjoyed by persons born therein. Among these may be mentioned the privilege of voting and the privilege of holding office. Some states, however, require further qualification, or impose restrictions in this respect, which operate to the exclusion from political privileges of large numbers of individuals who enjoy all the civil rights of citizens of the United States.[4]

[1] Lanz *v.* Randall, 4 Dillon (U. S. Circuit Court), 425; see, also, *Re* Conway, 17 Wisconsin Rep. 259.

[2] Lanz *v.* Randall *et al.*, 4 Dillon (U. S. Circuit Court), 425.

[3] *Re* Conway, 17 Wisconsin Rep. 259.

[4] Massachusetts, Pennsylvania, Georgia, Delaware, Rhode Island; see constitutions and laws of these states in respect of voters and electors.

The following resolutions have been introduced in the House of Representatives of the present Congress of the United States, and are now pending before the Judiciary Committee: —

"*Whereas* the laws of several of the states of this Union regulate within their respective jurisdictions the exercise of the elective franchise by prescribing certain conditions, taxes, or requirements, which are claimed by citizens of these states (as appears by a report of a committee of the United States Senate of this Congress) to be in violation of the Constitution of the United States and of the rights of citizens;

"*Whereas* such regulations of the elective franchise in such states, and especially in the states of Rhode Island, Massachusetts, Pennsylvania, Delaware, Virginia, and Georgia, are claimed to be restrictions upon the elective franchise, whereby certain citizens are excluded from participation in the right to vote; and

"*Whereas* it is made the duty of Congress to secure to each state a republican form of government, and as in ten states the right of suffrage is denied —

"*Resolved*, That a committee of five members be appointed by the Speaker to examine into the matters relating to the exercise of the elective franchise in the states named, so far as the same may be in violation of the Constitution of the United States, and authorizing the said committee to send for persons and papers, etc."

§ 148. An interesting sketch of the position of some of the founders of the republic, in relation to the adoption of the federal Constitution — which Parsons [1] calls "a wise and just compromise" — has been, fortunately, preserved.

"The three states, Massachusetts, Pennsylvania, and Vir-

[1] "The Constitution was a compromise — more than ingenious, for it was a wise and just compromise — between extreme views, both of which were pressed with great urgency." — *Rights of a Citizen of the United States*, p. 46.

ginia, were the largest, and were actively and strenuously in favor of a 'national' government. The two leading spirits were Mr. Hamilton, of New York, probably the author of the resolution, and Mr. Madison, of Virginia. In the early stages of the convention there was a majority in favor of a 'national' government. But in this stage there were but eleven states in the convention. In process of time New Hampshire came in, — a very great addition to the federal side, which now became predominant. It is owing mainly to the states of Connecticut and New Jersey that we have a 'federal' instead of a 'national' government, — the best government instead of the worst and most intolerable on earth. Who are the men of these states to whom we are indebted for this admirable government? I will name them; their names ought to be engraven on brass and live forever. They were Chief Justice Ellsworth, Roger Sherman, and Judge Paterson, of New Jersey. The other states further south were blind; they did not see the future. But to the coolness and sagacity of these three men, aided by a few others not so prominent, we owe the present Constitution."[1]

"One of the old-time philosophical politicians has left a volume that moulders on a few dusty book-shelves, under the quaint and curious title of 'The Lost Principle.' Long before the Civil War the author had dug out of his deep and thoughtful reflections the fact that one half of the dual character of American citizenship was paralyzed, and he foreshadowed that under the care of the black nurse it would cease to exist and slough off."[2]

The truth is that the world, impelled by steam and lightning, moves so fast that critical thought does not keep up with the changes, and, as a contemporary journal expresses it, some of the politicians are still worshipping at Druid altars.

[1] John C. Calhoun, 1847.

[2] Page McCarty, The Capital, Washington, D. C., Nov. 22, 1880.

§ 149. The author of a work treating of what he described as the sectional equilibrium,[1] which was published in the year 1860, used this language: "From the best analysis I have been able to make of the debates in the Virginia Convention, the objections against the (federal) Constitution, as already indicated, may be classed under two heads. From them all others were derived. 1. That the magnitude of the powers intrusted to the federal agent would, in their development, produce a consolidation of the states into one empire. 2. That the powers thus accumulated at the centre were so distributed between the North and the South that by the trick of minority representation, the latter would be brought under the political vassalage of the former. In the outset, Mr. Henry requested the speakers on the other side to gratify his 'political curiosity' by informing him by what authority the federal Constitution had used the phrase, 'we, the people,' instead of 'we, the states.' He regarded the employment of those words as tantamount to a fusion of the states into a single community. Madison promptly, and I think satisfactorily, responded that those words were employed to pass by the immediate agency of the state legislatures, and procure for the new government a popular recognition; and that the mode of its ratification unquestionably established that fact."

§ 150. The author just quoted then expresses his conviction that the battle over the Constitution was fought on other grounds. He was not an admirer of the character of Madison, nor of the part that he played in the convention, or subsequently in national politics; and he charges him with inconsistency and deceit. "He (Madison) presented to the convention what Henry happily termed a piece of 'political

[1] John Scott, "The Lost Principle: How It was Created, How It was Destroyed, How It may be Restored," pp. 116, 117. Richmond, Va.: James Woodhouse & Co.

anatomy.' I can say, notwithstanding what the honorable gentleman has alleged, that this government is not completely consolidated, nor is it entirely federal. . . . The members to the national House of Representatives are to be chosen by the people at large, in proportion to numbers in the respective districts. When we come to the Senate, its members are elected by the states in their equal and political capacity; but, had the government been completely consolidated, the Senate would have been chosen by the people in their individual capacity, in the same manner as the members of the other House. Thus it is of a complicated nature, and this complication, I trust, will be found to exclude the evils of absolute consolidation, as well as of a mere confederacy." [1]

On conclusion of the war between the states, the author of "The Lost Principle" published a supplement, which will be found curious and interesting.[2]

Some conception of the spirit in which the author approaches the discussion of his subject may be formed from the political apothegms selected as introductory to several chapters of his work, as follows: —

"In a despotic state, which is every government whose power is immoderately exerted, a real division is perpetually kindled." [3]

"Every government has its nature and principle, and its decay begins with the destruction of its principle." [4]

"A vice in representation, like an error in the first concoction, must be followed by disease, convulsions, and finally death itself." [5]

"There is a great difference between arts and civil affairs: arts and sciences should be like mines, resounding on all sides with new works and further progress; but it is not good to

[1] *Ib.* pp. 117 *et seq.*
[2] See Letter xi. pp. 53 *et seq.*
[3] Grandeur and Declension of the Roman Empire.
[4] Spirit of Laws.
[5] Wilson.

try experiments in states, except the necessity be urgent or the utility evident; and well beware that it is the reformation that draweth on the change, and not the desire of change that pretendeth the reformation." [1]

§ 151. A recent writer has very clearly presented the views of one class of American politicians of the present day.

"Before the adoption of the Constitution, sovereignty resided in each state. The state then had no superior. Its will was limited only by its physical power. But the states are not now sovereign in any sense. They are now restrained by the Constitution of the United States. . . . Congress is not sovereign, for it has only powers affirmatively granted, expressly or impliedly. But the power which can amend the Constitution of the United States is *illimitable*. Here, then, we arrive at the sovereignty in our systems. Here resides the whole potentiality of the system, which may repartition the powers of the states and the composite state; may redistribute the functions now divided between the local governments and the general government; may contract or dilate the sphere of either, *ad libitum;* may reduce the central agency to a shadow, or erect it into an empire. The only *possible* security, in the nature of things, against the exercise in any given manner of this power lies in the genius of our people." [2]

The Supreme Court of the United States, in the case of The Collector *v.* Day, described the relative powers of the federal and state governments in the following words: —

"It is a familiar rule of construction of the Constitution of the Union that the sovereign powers vested in the state gov-

[1] Bacon.

[2] Southern Law Review, Nashville, April, 1873, Vol. II. p. 321. That, in the opinion of some persons, "the foundations of the American republic have been (already) sapped by despotism" and that "an empire is foreshadowed," see article on the above text, The Sun, New York, Oct. 16, 1880.

ernments by their respective constitutions remained unaltered and unimpaired, except so far as they were granted to the government of the United States. That the intention of the framers of the Constitution in this respect might not be misunderstood, this rule of interpretation is expressly declared in the tenth article of the amendments, namely, 'The powers not delegated to the United States are reserved to the states, respectively, or to the people.' The government of the United States, therefore, can claim no powers which are not granted to it by the Constitution, and the powers actually granted must be such as are expressly given, or given by necessary implication.

"The general government and the states, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other within their respective spheres. The former in its appropriate sphere is supreme; but the states, within the limits of their powers not granted, or, in the language of the Tenth Amendment, 'reserved,' are as independent of the general government as that government, within its sphere, is independent of the states.

"Such being the separate and independent condition of the states in our complex system, as recognized by the Constitution, and the existence of which is so indispensable that without them the general government itself would disappear from the family of nations."[1]

Chief Justice Marshall had long ago ventured to declare that "No poetical dreamer was ever wild enough to think of breaking down the lines which separate the states, and of compounding the American people into one common mass."[2]

"It is now judicially ascertained and established," said the Court of Claims of the United States of America, so late as

[1] 11 Wallace Rep. 113.

[2] McCullough *v.* Maryland, 4 Wheat. U. S. Rep. 403.

the year 1870,[1] "that the legal redress given to a citizen of the United States against the United States is less than he can have against almost any government in christendom, and that the government of the United States holds itself, of nearly all governments, the least amenable to the law."

Curtis[2] has called the naturalization power a *practical* control upon the states in the matter of suffrage. He admits that it is "indirect," but contends that it is "effectual"; and he says, "For I believe that no state has ever gone so far as, by express statutory or constitutional provision, to admit to the right of voting persons of foreign birth who are not naturalized citizens of the United States."

The result of the adoption of the Fourteenth and Fifteenth Amendments, and of congressional action to enforce their provisions, as construed in more recent cases, would seem to lead logically, although indirectly, to a practical and efficient transference of the subject of suffrage to the federal jurisdiction. Such an inclination has already been manifested.[3]

"The wise statesman will never restrict suffrage, or exclude the lower and more numerous classes from all voice in the government of their country."[4]

Though the power of naturalization be nominally exclusive in the federal government, its operation in the most important particulars, especially as to the right of suffrage, is made to depend on the local constitution and laws.[5] Suffrage is not incident to citizenship;[6] suffrage is not a natural right.[7]

[1] Brown's Case, 6 U. S. Court of Claims Rep. p. 172.

[2] Commentaries on the Constitution, p. 202, note.

[3] Wallace's Majority Report on Federal Election Laws. Also Minority Report U. S. Senate; 46th Congress, 2d Session.

[4] O. A. Brownson, in The American Republic, p. 322.

[5] Lawrence's Wheaton's Int. Law, Appendix, 903.

[6] Cooley, Principles of Constitutional Law, p. 250.

[7] Spencer *v.* Board of Registration, 1 MacArthur, 169; U. S. *v.* Anthony, 11 Blatchf. 200.

"These provisions," says Curtis[1] (referring to a *uniform* rule of naturalization), "were not only necessary in the actual situation of the states, but they were also in harmony with the great purpose of the representative system that had been agreed upon as the basis of one branch of the legislative power. . . . But the power that was given, by unanimous consent, over the subject of naturalization, shows the strong purpose that was entertained of vesting in the national authority an efficient practical control over the states in respect to the political rights to be conceded to persons not natives of the country."

§ 152. A corporation is a citizen of the state which creates it.[2] It is an artificial person, and it is limited, in its operation in the field of jurisdiction, to the power which created it.[3]

And a corporation is not a citizen within the meaning of the constitutional provision that the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states.[4]

Mr. Justice Field[5] declared that the term "citizens," as used in the constitutional provision, applies only to natural persons, members of the body politic, owing allegiance to the state, not to artificial persons created by the legislature, and possessing only the attributes which the legislature has prescribed.

§ 153. "In the Constitution of the United States the article on the judiciary provides that the judicial power of the United

[1] Commentaries on the Constitution, p. 201.

[2] Orange, etc., Railroad Co. *v.* City Council of Alexandria, 17 Gratt. 176.

[3] Bank of Augusta *v.* Earle, 13 Pet. 519.

[4] Paul *v.* Virginia, 8 Wall. 168; Warren Manuf. Co. *v.* Ætna Ins. Co., 2 Paine, 501.

[5] *Ib. supra.* As to citizenship in the territories, see Prentiss *v.* Brennan, 2 Blatchf. (C. C.) 162; Sinks *v.* Reese, 19 Ohio St. 306; Com. *v.* Clary, 8 Mass. 92.

States shall extend to controversies between citizens of different states, jurisdiction being thereby made dependent, not upon the subject-matter of the suit, but upon a citizenship of the different states."[1] The question,[2] therefore, arises whether a corporation is a citizen within the meaning of the above constitutional provision. This question came before the Supreme Court of the United States in 1809, and that court held that the capacity of a corporation aggregate to sue in the courts of the United States depended upon the citizenship of the corporators, and that the averment as to citizenship must apply to the members of the corporation as individuals, "because it could not be true as applied to the corporation";[3] and this doctrine continued to prevail until 1844, when the views hitherto prevailing were modified.

In Louisville, Cincinnati, etc., Railroad Company *v.* Leston,[4] the court declared that "a corporation created by a state to perform its functions under the authority of that state, and only suable there, though it may have members out of the state, seems to us to be a person, though an artificial one, inhabiting and belonging to that state, and therefore entitled, for the purpose of suing and being sued, to be deemed a citizen of that state." And now a corporation created by and transacting business within a state is, for the purpose of suing and being sued in the federal courts, deemed to represent corporators who are citizens of such state.[5] A foreign corporation is likewise deemed to represent corporators who are aliens.[6]

§ 154. What are the privileges and immunities which the citizens of each state are entitled to in the several states by

[1] See art. 3, sect. 2.

[2] "Citizenship," Central Law Journal, Oct. 8, 1880, p. 284.

[3] Bank of the United States *v.* Deveaux, 5 Cranch, 61.

[4] 2 Howard, 497.

[5] United States Bank *v.* Planters' Bank, 9 Wheat. 904; Ohio, etc. Railroad Co. *v.* Wheeler, 1 Black, 286; Insurance Co. *v.* Francis, 11 Wall. 210.

[6] Society, etc. *v.* New Haven, 8 Wheat. U. S. Rep. 464.

reason of their citizenship, and the constitutional provision above referred to? "We feel no hesitation," said Mr. Justice Washington,[1] "in confining these expressions to those privileges and immunities which are in their nature fundamental, which belong of right to the citizens of all free governments, and which have at all times been enjoyed by the citizens of the several states which compose this Union from the time of their becoming free, independent, and sovereign: what those fundamental principles are it would perhaps be more tedious than difficult to determine."[2]

"The Supreme Court of the United States declines to specify what these privileges and immunities are, preferring to decide each case as it arises upon its own particular circumstances.[3] In the last case cited the question was whether the State of Virginia could prohibit the citizens of another state from planting oysters in a navigable river of that state while it granted the privilege to citizens of its own state. The court held that it had a right to do so. The decision was pronounced by Chief Justice Waite, who said: 'The right thus granted is not a privilege or immunity of general but of special citizenship. It does not belong of right to the citizens of all free governments, but only to the citizens of Virginia, on account of the peculiar circumstances in which they are placed: they and they alone owned the property to be sold or used, and they alone had the power to dispose of it as they saw fit. They owned it, not by virtue of citizenship merely, but of citizenship and domicile united, that is to say, by virtue of a citizenship confined to that particular locality.' It may be assumed, however, that this provision protects the rights which pertain to general citizenship as distinguished from a citizenship that is special and local. Among these might be named the right to acquire and possess property; the right to

[1] Corfield *v.* Coryell, 4 Wash. U. S. C. C. Rep. 380.
[2] Central Law Journal, Oct. 5, 1880.
[3] McCready *v.* Virginia, 94 U. S. 391.

the protection of life, liberty, and property; the right of a citizen of one state to pass through or to reside in any other state for purposes of trade, for agricultural or professional pursuits; the right to bring and maintain actions of every kind in the state courts; the right to the benefit of the writ of *habeas corpus*. The cases in which the courts have been called upon to pass upon this constitutional provision have been numerous, and the limits of this article will not permit a review of them in this connection. We must be content with a simple reference to some of the more important."[1]

"It was held, before the abolition of slavery, that it was not one of the privileges of state citizenship for a master, in passing through a free state, to take his slaves with him and hold them in servitude.[2] And it is not a privilege of citizenship that persons who are married or reside in a particular state should be entitled in another state to such rights in property under and by virtue of the marriage relation as are given to those who are married or reside in this latter state, but each state is at liberty to regulate these rights according to its own views of what is politic and just.[3]

"But no state can discriminate against the citizens of other states in matters of taxation; and a statute providing for the imposition of license fees, yet discriminating against those not permanently residing within the state, is regarded as invalid.[4] The Supreme Court of the United States has recently decided that a statute which denies to colored citizens the right and privilege of participating in the administration of the law as jurors because of their color, though qualified in all other respects, is a discrimination against that race forbidden by the

[1] 16 Wall. 36; 18 Wall. 129; 16 Wall. 130; 92 U. S. 542; 3 Central Law J. 295; 37 N. J. 106; 21 La. Ann. 434; 2 Munf. 393; 3 Harr. & M. 554; 10 Conn. 340; 3 R. I. 138; 13 Gratt. 767.

[2] Lemmon *v.* People, 20 N. Y. 562.

[3] Conner *v.* Elliott, 18 How. U. S. Rep. 591.

[4] Ward *v.* Maryland, 12 Wall. 418.

Fourteenth Amendment.[1] A statute in Illinois provided that every person convicted of larceny should be deemed infamous, and should forever thereafter be rendered incapable of holding any office of honor, trust, or profit, of voting at any election, of serving as a juror, etc. A person convicted under such a law was subsequently pardoned by the governor, and it was held that he was not thereby restored to his competency as a witness. The court said that a pardon could work such restoration only in cases where the disability was a consequence of the judgment, and not in those cases where the disability was annexed to the conviction." [2]

§ 155. If, by the laws of the country of their birth, children of American citizens born in such country are subjects of its government, the legislation of the United States will not be construed so as to interfere with the allegiance which they owe to the country of their birth while they continue within its territory.[3]

Although the government of one country may grant to persons owing allegiance to that of another the rights and privileges of citizenship, it is not intended to intimate that the government making such grant would thereby, and without their consent or change of domicile, become entitled to their allegiance in respect to any of their political duties or relations.[4]

§ 156. Recent amendments to the Constitution, followed by congressional legislation to carry them into operation, or to give them effect, together with decisions of the Supreme

[1] Strauder *v.* West Virginia, 100 U. S. 303. See also Neal *v.* Delaware, U. S. Supreme Court (October Term, 1880), affirming doctrines announced in Strauder *v.* West Virginia; Virginia *v.* Rives, and *Ex parte* Virginia (100 U. S. 303, 313, 339), reaffirmed: Waite, C. J., and Field, J., dissenting.

[2] Foreman *v.* Baldwin, 21 Ill. 299; Citizenship, Central Law Journal, Oct. 8, 1880.

[3] United States Consular Regulations (1870), p. 40, ¶ 115.

[4] Calais *v.* Marshfield, 30 Me. Rep. 520.

Court of the United States before referred to have made the general public, but lawyers more particularly, familiar with expressions which indicate to some extent the recent enlargement of the sphere of the federal government.[1]

But it is not, as it seems to the writer, sufficiently kept in view, in the contemporaneous discussions of constitutional questions, in and out of court, that the enlargement of the sphere of the federal government signifies and necessitates a corresponding curtailment of the action of state governments. The result of this is that the relations of the state to the general government, as existent (whether for better or worse, time will determine), are materially different from what they were upon the adoption of the federal Constitution, or what they were actually up to a recent period. One of the primary effects which flow from this difference is the gradual but complete subordination of state to federal power, in matters heretofore considered to have been within the peculiar province of state jurisdiction. Meanwhile controversies in the political field are continued by the rival adherents of the two systems on questions which have been definitively determined by constitutional amendments, and by congressional legislation, sustained by judicial decisions.

§ 157. Since the above was written, one phase of this subject has been discussed elsewhere in an article which is instructive and suggestive. The writer shows how far we have advanced upon the views held by leading Federalists, when the Constitution was adopted, and points out the danger of going any further in that direction.[2]

It is by no means easy, as yet, to determine the full import or to forecast the probable outcome and effect of late amendments to the Constitution of the United States in connection with recent acts of Congress, and of more recent decisions of

[1] The Nation, New York (No. 799), Oct. 21, 1880.

[2] Centralization in the Federal Government, North American Review, May, 1881.

the Supreme Court sustaining the validity and constitutionality of certain acts of the federal legislature which have been, within a brief period, before the tribunal of last resort. It may not be denied, however, that a consequent result of the late civil war between the states, as incorporated and expressed in these several amendments, acts, and decisions, has been a revolution in the structural composition as well as in the fundamental character of the relation of all the people to the United States government. The legislative and judicial branches of the general government, — rapidly following a majority of the states in their action, *qua* states — have contributed largely to this revolution by an attempt to bring about unification in the law of the land in respect to the rights, privileges, obligations, and duties which attach to citizenship of the United States. As a further result, the relations heretofore existing between the several states, *qua* states, and the general government have undergone complete metamorphosis. One of the necessary and immediate consequences is a corresponding change in the character and nature of the obligations imposed upon the citizen in reference to the state and to the general government. The inevitable tendency of this policy must be to increase and exalt the dignity of the character of citizen of the United States, — if such a result be practicable or wise, — at the expense of the rights and privileges of the citizen of the state. In a word, if the system which has prevailed for some time continues, the rule of the central, federal, or metropolitan government over the people in all the higher and privileged relations of citizenship will be substituted throughout the length and breadth of the land for local self-government. Two principal results — the inconveniences of which are beginning to be felt already — have come from the adoption of a policy which sanctions a latitudinarian enactment and application of federal statutes for the removal of causes from state courts; *first*, the practical abrogation of the common-law doctrine and practice which

committed the personal freedom and the prerogative rights of the citizen to the protection of the local bailiwick, hundred, or county; *secondly*, a practical denial of justice to hundreds of suitors who are appropriately before the federal courts, in consequence of delay and embarrassment incident to the prosecution of state causes in federal courts of last resort, which has naturally resulted in over-crowded dockets before over-taxed judges. Attention is elsewhere called to the actual condition of the docket of the Supreme Court of the United States.[1] The writer does not lose sight of the vigorous and repeated disclaimers to be found in recent decisions of the Supreme Court already quoted; but he is here referring to a political system which has numerous and able advocates in the country, and to the existence and influence of a sentiment which, consciously or unconsciously, has affected and continues to affect judicial decisions as well as legislative action in respect to political questions.

"The question respecting the extent of the powers actually granted [to the federal government]" said Chief Justice Marshall in 1819, "is perpetually arising, and will probably continue to arise as long as our system shall exist."[2]

§ 158. The Thirteenth Amendment "trenches directly upon the power of the states and of the people of the states. It is the first and only instance of a change of this character in the organic law."[3]

This expression of judicial opinion was announced anterior to the passage of the Fourteenth and Fifteenth Amendments.[4]

A writer in a recent number of an American law review[5] has discussed very fully and ably some questions in this rela-

[1] The Needs of the Supreme Court, North American Review, May, 1881.

[2] McCullough *v.* State of Maryland, 4 Wheat. U. S. Rep. 405.

[3] United States *v.* Rhodes (by Justice Swayne), Kentucky, October Term, 1867.

[4] See Paschal, Annotated Constitution, p. 273.

[5] Southern Law Review, October, 1878, p. 558.

tion, in a paper entitled, "The Fourteenth Amendment: The Slaughter House Cases." In this article, appropriate sections of the Fourteenth and Thirteenth Amendments are set forth. The history of the bill and amendments, and a sketch of the debate in Congress, which preceded the enactment of the Civil Rights Bill, as well as the text of the Act of the Legislature of Louisiana, the constitutionality of which was in question in the principal case, are presented in detail. The writer doubts the wisdom or correctness, from a judicial standpoint, of the opinion of the majority, and commends the expression of the minority of the court, as more sound and defensible. He says: "The truth is, when this amendment first came before the Supreme Court for construction, the minds of patriotic men were filled with alarm at the centralizing tendency of the government. The President of the United States was holding a half a dozen states under the armed heel of military despotism; the Congress of the United States was indicating its disposition strongly and more strongly at each successive session, to encroach upon the reserved rights of the states; and those who wished well to their country looked with sorrowing eyes upon the prospect that the ancient landmarks of the states were to yield before the advancing strides of an imperial despotism. No one can deny that the disposition of the majority of the court to put some construction upon this amendment which would curb the progress of federal power was a most patriotic one. But was it wise?" [1]

The same writer calls attention to a feature of the leading case, which is often lost sight of or misunderstood. His language as to this is: "There could have been no criticism upon the action of the Louisiana legislature in the Slaughter House Cases if the charter given the slaughter house com-

[1] Southern Law Review, October, 1878, p. 576. Compare with decision in Slaughter House Cases, Munn *v.* Illinois, 94 U. S.; and Davidson *v.* New Orleans, 96 U. S. p. 97.

pany had been really a police regulation. But it was a colorable exercise only of police power. It was giving a party of monopolists unwarrantable privileges, under the pretence of prescribing police regulations."[1]

The fifteenth article of amendments to the Constitution declares that "the right of citizens of the United States shall not be denied or abridged by the United States, or by any state, on account of race, color, or previous condition of servitude."

Section 2004 of the Revised Statutes, which has immediate reference to the elective franchise, is in these words: "All citizens of the United States *who are otherwise qualified by law to vote* at any election by the people in any state, territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any state or territory, or by or under its authority, to the contrary notwithstanding."[2] The qualification italicized is an important one to remember.

The fourteenth and fifteenth articles of amendments to the Constitution contain a section as follows: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

And it has been stated in argument, in a contested election-case before the forty-sixth Congress of the United States, second session,[3] that in Massachusetts, 144,509 persons are disfranchised, in contravention of the first section of the Four-

[1] *Ib.* p. 584. See also argument of J. A. Campbell and J. Q. A. Fellows (of counsel) against the Monopoly, 16 Wall. (U. S.) Rep. p. 52 *et seq.*

[2] Revised Statutes of the United States, pp. 351–359; Fifteenth Article of Amendments to the Constitution; Giauque, Election and Naturalization Laws of the United States; Parsons, Rights of a Citizen of the United States, pp. 190 *et seq.*

[3] Benjamin F. Butler, *arg.*, in Boynton *v.* Loring.

teenth Amendment to the Constitution of the United States; and it was insisted that, in accordance with the law of the United States as laid down in Sect. 2 of the same article, the representation of Massachusetts in the Congress of the United States should be cut down from eleven to eight representatives, and from thirteen electoral votes to ten.

A committee of the United States Senate, forty-sixth Congress,[1] has submitted a report in which it is said that the number of persons deprived of the right of suffrage by the property qualifications imposed upon foreign-born citizens by the constitution and laws of Rhode Island is variously estimated at from 3,000 to 25,000.

To correct these and similar violations of the law by these and other states, and to enforce provisions of the second section of the Fourteenth Amendment, a majority of the committee recommends the passage of an act to provide for such an enumeration of persons in the tenth census as will clearly designate the basis of representation required to be made under the Fourteenth Amendment, and they report the following bill for that purpose: —

"*Be it enacted by the Senate and House of Representatives of the United States in Congress assembled*, That in taking the enumeration of the inhabitants of the several states, as directed by the Constitution of the United States to be taken at the next and each subsequent enumeration thereof, it shall be the duty of the superintendent of the census to cause to be ascertained the number of citizens of the United States, inhabitants of any state, being males twenty-one years of age and upwards, whose right to vote at any election named in the Fourteenth Amendment to the Constitution of the United States has been denied or in any way abridged by the constitution or laws of any state, except as authorized by said Fourteenth Amendment."

[1] Wallace, chairman; see 23 Pick. (Mass.) R. 308.

§ 159. What was deemed appropriate legislation, in this connection, may be gathered from the language of the act commonly referred to as the "Enforcement Act," approved May 31, 1870, entitled "An Act to enforce the Rights of Citizens of the United States to vote," and "An Act to protect all Citizens in their Civil and Legal Rights," approved March 1,[1] 1875, and the subsequent decisions of the Supreme Court of the United States, declaring the aforesaid acts constitutional.[2]

It would appear that the result of the adoption of the construction placed by the Supreme Court of the United States upon recent constitutional amendments will be to deprive the states of rights hitherto regarded as inalienable prerogatives of state jurisdiction, and to transfer the same to federal jurisdiction and control.

The later decisions would seem to be somewhat inconsistent with the position taken by the same court in the "Slaughter House Cases."[3]

§ 160. The Fourteenth Amendment contains a section as under: —

"Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. *But when the right to vote* at any election for the choice of electors for president and vice-president of the United States, representatives in Congress, *the executive or judicial officers of a state, or the members of the legislature thereof, is denied* to any of the male inhabitants of such state, being twenty-one years of age and *citizens of the United States*, or in any way abridged, except for participation in

[1] 18 Stat. Part III. 336, Revised Statutes, sect. 643.

[2] *Ex parte* Siebold and others, 100 U. S. Reps.; Tennessee *v.* Davis, 100 U. S. p. 257; *Ex parte* Virginia, 100 U. S. p. 339.

[3] See discussion of the Fourteenth Amendment and the Slaughter House Case in Southern Law Journal, 1879.

rebellion or other crime, *the basis of representation therein shall be reduced* in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age *in such state.*"

§ 161. In some expressions of admiration passed upon the opinion of the United States Supreme Court in Marbury *v.* Madison, which was delivered by Chief Justice Marshall, the accomplished president of the American Bar Association (Mr. Phelps of Vermont), in an address delivered at Saratoga, in the summer of 1879, used this language: —

"As every lawyer and every intelligent layman knows, the point of most danger and difficulty in constitutional construction, where the greatest risk of final shipwreck is incurred, is in the attempt to adjust those conflicting — sometimes doubtful, always very delicate — relative rights of the states and the federal government. That point, of all others, was treated by the court with the largest sagacity and the greatest wisdom. Critical as were many of the emergencies which arose in those days out of that subject, they were not only satisfactorily met, but buried and forgotten forever, under the wise and salutary administration of the law which they encountered."

§ 162. In discussions on the subject, out of as well as in courts of the United States, citizenship and suffrage are often confounded; but they are entirely distinct things, although similar in some respects, and frequently united.[1] We have seen that it was different at Athens and under the Roman republic.

In this respect, it must be admitted that as yet the standard of American citizenship falls below the dignity of citizenship as familiar to and defined by Aristotle. While it may not

[1] Parsons, Rights of a Citizen of the United States, p. 189; Bates on Citizenship; Carroll *v.* Carroll, 16 How. (U. S.) R. 287; Pascal, Annotated Constitution of the United States, p. 275.

be on a level with the citizenship of Rome under the republic, or of freer classic Athens, it has a dignity and a value of its own, well worthy of appreciation and careful guarding.

"It must be remembered," says Parsons, "that citizenship (in the United States) is not suffrage; and that naturalization, of itself, confers no right of suffrage.[1] The result of naturalization is to make the individual *a citizen of the United States;* whereas the right of suffrage has heretofore and uniformly been conferred by the states in their capacity as states. It was considered that self-interest would, without other motive, induce them to be liberal in this respect. This has not, however, always proved to be the case.[2]

§ 163. A present interest attaches to the discussion of the effect of recent amendments to the Constitution on petitions for *certiorari* and in the several *habeas corpus* cases from Virginia, West Virginia, Maryland, and Ohio, recently decided[3] by the Supreme Court of the United States. It is necessary to bear in mind, on the threshold of any discussion of these amendments, what has been already pointed out, namely, that the Supreme Court has heretofore declared that there is a citizenship of the United States and a citizenship of the respective states;[4] and it is argued that the guarantee

[1] Parsons, Rights of a Citizen of the United States, p. 190.

[2] As to what constitutes citizenship for the purposes of sustaining the jurisdiction of federal courts of the Union, in suits between citizens of different states, see Curtis's Commentaries on the Constitution, sect. 77 *et seq.*, and cases cited; Meyer, Index U. S. Supreme Ct. Rep., word "citizen"; Desty, Federal Constitution, word "citizen." For meaning of "citizen" in the Judiciary Act, see Curtis, Jurisdiction of the U. S. Courts, p. 118.

For a discussion sustaining the liability of the United States to protect the persons of British subjects, even as against Great Britain, see British and Foreign State Papers, 1844–1845, p. 141. See *passim*, opinion of Rayner, J. (Court of Commissioners of Alabama Claims) *in re* Benjamin West *v.* United States, State Department, Washington; also Brief of Bliss in Gordon *v.* United States, Court of Commissioners Alabama Claims, *Ib.*

[3] 100 U. S. Sup. Ct. Rep. pp. 257–422.

[4] Slaughter House Cases, 16 Wall. 36; Cruikshank's Case, 92 U. S. 542.

secured by the Fourteenth Amendment, forbidding any abridgment of the privilege and immunities of citizens of the United States, has reference to "citizens of the United States" as distinct from citizens of the states.

The Fifteenth Amendment prohibits distinctions on account of "race, color, or previous condition of servitude," but it leaves the states free to make distinctions on account of nativity, sex, age, religion, education, or property. The original draft of this amendment, as reported by Boutwell of Massachusetts to the Reconstruction Committee of the Fortieth Congress, contained the words "nativity and religious belief." Upon representation being made that with the words "nativity" and "religious belief" in this amendment, it would be impossible for the state to deny suffrage to the Chinese, these words were stricken out.

The guarantee of the specific right to vote is assured to "all citizens of the United States who are otherwise qualified by law to vote," etc.

The Supreme Court of the United States had heretofore declared that citizenship has no necessary connection with the franchise of voting, eligibility to office, or, indeed, with any other rights, civil or political.[1] Women, minors, and persons *non compos* are citizens, and not less so on account of their disability; but they cannot vote.[2]

[1] Carroll *v.* Carroll, 16 How. 287.

[2] Since the above was written the Supreme Court of the United States in one of the cases referred to (Taylor Strauder *v.* West Virginia, 100 U. S. Sup. Ct. Rep. p. 303) has decided that the Fourteenth Amendment of the federal Constitution is one of a series of constitutional provisions having a common purpose, namely, to secure to a race recently emancipated, and held in slavery through many generations, all the civil rights that the superior race enjoy, and to give to them the protection of the general government, in the enjoyment of such rights, whenever they should be denied by the states; whether it had other, and if so, what purposes, was not decided. It was also held in this case that the amendment not only gave citizenship to persons of color, but it denied to any state the power to deny them the equal protection of the laws, and invested Congress with power, by appropriate legislation, to enforce its provi-

§ 164. Whether well founded or not, the impression exists in the minds of many thoughtful men throughout the United States, who do not hesitate to express opinions on the rostrum or through the press, that events of present occurrence indicate that the two extremes between which the political pendulum now vibrates may be described as, on one side, the perpetuity of the states as independent political autonomies, and on the other side, the creation of a homogeneous and stable metropolitan government at the federal capital. The attraction has been, however, from obvious causes and for a long time, in the latter direction. The tendency of this latter force, it is habitually said, is in the direction of a centralization of all political power at the seat of the metropolitan government.

There are not wanting indications, however, that tend to encourage the belief that a popular reaction in favor of a less eccentric movement, and in the direction of a practical restoration of the natural and constitutional relations between the state and federal governments, will before long make its influence felt.

§ 165. A cautious but critical observer, who has availed of singular opportunities to study the structural relations of the government of the United States, and who possesses, in a rare degree, the power of generalization which characterizes some of his countrymen, writing in 1870, said, when discussing the relations of the president to the states: —

"Thus, if we do not include the exceptional cases just mentioned, the Union and the states act, if we may say so, in distinct and independent spheres. The president and Congress should abstain from asserting the powers delegated by

sions. The court then proceeded to pass upon the privilege extended to colored citizens (meaning negroes resident in a particular state) to serve on juries, and the right or privilege of having the opportunity of being tried, whenever arraigned, by persons of their own color.

the people to the local governments. The latter cannot rightfully suspend the national authority or interfere with its exercise. If, then, the government of the United States is not a league or confederacy of states, as separate and sovereign communities united by a compact, neither is it a consolidated government, without limitation of powers, representing the entire sovereignty. It was designed to maintain not only the supremacy of the national authority, but also the reserved rights of the states. Federal encroachments on those rights would be fatal to republican institutions on this continent.

"We may readily see that, should the autonomy of the states disappear, the executive power would at once essentially change and assume inordinate proportions. It is to a great extent confined by the state governments to that sphere of action prescribed for it by the Constitution. In fact, incessant conflicts would take place between the executive, which is independent within the scope of its constitutional authority, and the legislature, with the increased powers that would almost necessarily attach to it on the destruction of the governments of the separate states. From that time one might foresee that the president, although a person of limited ability, would succeed in gaining the sympathy and influence of a majority of the people. Doubtless the latter might at times declare in favor of a deliberative assembly, but it would not be safe to depend on their permanent support. Called upon to choose between an abstract sovereignty and the concrete idea of power centred in one man, they would in the end almost always prefer the living personality, and recognize him as the elect of the nation, without scarcely remembering that they had also chosen their representatives.

"The government of the United States is as vigorous as circumstances may require. The executive authority is so constituted that it may act with perfect liberty within its authorized limits, and these are hedged in by barriers which

cannot be readily surmounted. On one side it is confronted by the legislature and by a firmly-established judicial power, which is almost always able to expound and enforce the rights of citizens, and on the other are these thirty-seven independent bodies, which are scarcely amenable to its action. Thanks to this combination, the presidential power is exerted with vigor, and it proves equal to all the requirements of the most varied situations; and nevertheless he to whom it is confided may be, from time to time, changed, because no man is an indispensable necessity. But let the organization of the states disappear, and the condition of things will at once become modified. This was clearly seen in the interval between the overthrow of the confederate government and the present moment. As is known, Congress decided that the inhabitants of the insurrectionary states had renounced their privileges and power in the Union. (Report of the Committee on Reconstruction, pp. 11 *et seq.*)

"This is not the place to examine the bearing or the character of the measures then adopted, but it is impossible to deny that, by reason of the destruction of these ten states, the federal authority was largely extended beyond its constitutional limits. In fact, an immense power was assumed and exercised. If this anomalous state of things had been greatly prolonged, and the dominant party had not labored to efface even the last traces of it, we may be allowed to express the opinion that there might have resulted a centralized republic, which would with great difficulty have been maintained.

"These eventful times also brought about a conflict between the president and Congress. Was the power to reconstruct the Union vested in him or in them? Their respective partisans discussed this preliminary inquiry with equal violence, and the struggle was renewed when the question arose as to what plan of reconstruction should be adopted. At last matters reached a most critical point. The president was impeached, and narrowly escaped conviction. The momen-

tary disorganization of ten states was enough to endanger the life of the federal government. The equipoise and division of powers so carefully adjusted by the Constitution were deranged, and it seemed that they would be entirely broken up. If the friends of freedom in America did not despair of the republic, it was because of their trust and belief that the conflict would be short, and that the normal and benignant sway of their institutions would be gradually restored. Let us then hope that the regular action of life will by degrees be resumed and felt in each of the Southern States. The natural order of things will then be re-established throughout the Union; but until this propitious event occurs, there will be eccentric movements in the working of the federal government, and from time to time threatening attempts at centralization." [1]

§ 166. Another author sees danger to the republic from the development and tendency of what may be termed "executivism," rather than from "centralization." [2] And it may not be denied that all progress in the direction of centralization will make easier and more practicable the success of executivism, as is fully and well pointed out by an author already quoted.[3]

§ 167. An English traveller of pronounced views and strong convictions in regard to American as well as English politics, who made a brief sojourn in the United States in 1868, expressed himself very freely as to the political principles and sentiments of the two great party organizations in the country at that date. In a forecast of the political future of the United States, this observer said: —

[1] The Executive Power in the United States, M. Adolphe de Chambrun, pp. 233–236.

[2] The North American Review, November, 1880, — "The Monarchical Principle in Our Constitution." Upshur, "The Nature and Character of Our Federal Government."

[3] De Chambrun.

"The system of presidential election and the constitution of the senate are matters to which the Republicans will turn their attention as soon as the country is rested from the war. It is not impossible that a lifetime may see the abolition of the presidency proposed,[1] and carried by the vote of the whole nation. If this be not done, the election will come to be made directly by the people, without the intervention of the electoral college. The senate, as now constituted, rests upon the states; and that state rights are doomed, no one can doubt who remembers that of the population of New York State, less than half are native-born New Yorkers. What concern can the cosmopolitan moiety of her people have with the state rights of New York? When a system becomes purely artificial, it is on the road to death; when state rights represented the various sovereign powers which the old states allowed to sleep while they entered a federal union, state rights were historical; but now that Congress, by a single vote, cuts and carves territories as large as all the old states put together, and founds new commonwealths in the wilderness, the doctrine is worn out."[2]

§ 168. In 1880 a metropolitan journal[3] used this language: "The vastness of the revenue, the multitude of conflicting interests, the complexity of the laws, the heterogeneous character of the population, and the recent enlargement of the sphere of the federal government have combined to make the presidency an office which ought either to be filled by a trained and experienced civilian or abolished as a public danger and nuisance."

One year later the same journal published a communication in which the following occurs: "Each presidential

[1] See *passim* "The Monarchical Principle in Our Constitution," North American Review, November, 1880.

[2] Greater Britain, p. 208, Charles Wentworth Dilke. Harper Bros., 1869, New York.

[3] The Nation, New York, No. 799.

election is, so far as the chief actors are concerned, a mere sordid strife between the office-holders and the office-seekers." [1]

§ 169. The writer of the article on "The Monarchical Principle in Our Constitution" [2] says: —

"There are objections to an executive consisting of a single person in confederate or composite states, that do not apply to an homogeneous country.

"Take, for example, the United States, whose interests, north and south, were avowedly, during the whole period of slavery, antagonistical. It cannot be doubted that a single executive possessing the immense prerogative enjoyed by the president of the United States might influence legislation, as well as the administration of the government, in favor of his section to the prejudice of the others. Some attempts were made, during the disputes with regard to the tariff and slavery, as to a plan by which the rights of each section might be protected. Mr. Calhoun proposed a dual executive, having a legislative and executive action, as one of the means of preserving the balance of power between the two sections.

"The discordant interests of Austria and Hungary induced the establishment of two general governments in the Austro-Hungarian monarchy. It ordinarily happens that when, in a confederacy, there is one head, the office is attached not to the individual but to the prominent state. For instance, in the present empire of Germany, it is the King of Prussia, not as an individual, but King of Prussia, who is Emperor of Germany. And the subordination of the other states of Germany to Prussia is always recognized.

"But I know of nothing more suitable to our condition than the present constitution of Switzerland. The Swiss constitution provides for the exercise of the supreme execu-

[1] The Nation, No. 800. [2] North American Review, November, 1880.

tive authority by a federal council, composed of seven members, only one of whom can be chosen from the same canton. They are named for three years by the two houses of the legislature (federal assembly), denominated the National Council and Council of States, the former corresponding to the House of Representatives, the latter to the Senate, of the United States. From this federal council the president and vice-president of the confederation are annually appointed by a vote, also of the two houses; but their functions are not materially different from those of the other members, and four members are required to sanction every deliberation. The duties of the federal council consist especially in superintending the national relations of the confederation.

"In conclusion, I would remark that the views here stated, however illustrated by recent events, have exclusively in view matters of permanent interest. So far, indeed, as regards the contest now pending, the verdict of the people will be rendered before this article comes regularly into the hands of the subscribers."

§ 170. Another observer of the tendencies in American politics apprehends danger to the perpetuity of the republic from the aggrandizement and rule of the money oligarchy.[1] It has been said, "When the passion of avarice grows general in a country, the temples of Honor are soon pulled down, and all men's sacrifices are made to Fortune."[2]

§ 171. Some observers claim to discern "in well-defined and not remote succession the gradual consolidation of power in the hands of the few, the merging of centralization in monarchy, — monarchy loosened from all constitutional moorings, drifting

[1] North American Review, November, 1880, "The Republican Party as it Was, and as it Is."

[2] "An, hæc animos ærugo et cura peculi
Quum semel imbuerit, speramus carmina fingi
Posse linenda cedro, et levi servanda cupresso?"

into imperialism, and imperialism swallowed up at last in anarchy. Others solemnly assure us that the only danger to the republic lurks in the railway monopolies, that our civil institutions are to be finally buried under a despotism of transportation pools and trunk lines.[1]

"Others insist that the government as established by the fathers is to be rolled out of shape and into the dust under the Juggernaut of the National Banks; others again, that the concentration of wealth in the hands of Vanderbilts, Goulds, and the bonanza kings will result in their capturing both Houses of Congress, as they are already in a fair way to capture the Senate, and the rest of the people be left to die of slow starvation. And so on with various other vaticinations.

"There is a greater danger than all these.

"It is a danger that has done more to make beggars and sycophants than almost anything else, a danger that stunts the growth of young men, demoralizes honest industry, emasculates a manly ambition.

"It is a danger that is actual and imminent, that infatuates and captivates the strong as well as the weak, — a danger that turns even the wise head, while it enfeebles the less wise.

"It is a danger that has an infinitude of ramifications, like the veins and arteries, — a danger that haunts the corridors of the capitol, that has found its way even to the Chamber of the Senate, and stolen away the dignity, if not the brains and morals, of the most august legislative assembly on the face of the earth.

Of this danger the floors of that assembly for the past three weeks have furnished a striking and significant — it should be a painful and startling — illustration.

"It is the danger that waits upon an insatiate, incurable,

[1] See daily journals. Also, "The Regulation of Railroads," The Princeton Review, May, 1881; "The Right to Regulate Railway Charges," The North American Review, June, 1881.

and conscienceless mania for the spoils of public office and the drippings of Federal pap, at the cheapening of honor, the betrayal of duty, and the derogation of true statesmanship." [1]

§ 172. An English journal said some time ago that the United States was an American heptarchy, being ruled by seven railroad kings, each district having a separate monarch. And an American journal of recent date adds: "The comparison is too true; but if this represented the full extent of the evil we should not have so much of which to complain. It is worse, very much worse. The majority of senators who have recently been elected, although nominally entering the Senate on behalf of the people, will, in reality, be diametrically opposed to their interests."

In the presence of the above and similar vaticinations as to the political future of the country, it will be comforting to consider the following expression of opinion from the *Saturday Review:* "It is the peculiar felicity of the United States that American citizens can afford to occupy themselves with controversies which may be decided either way without serious political disadvantage. The country enjoys unbounded and growing prosperity, and one Secretary of the Treasury after another is enabled to announce large and rapid reductions of the national debt. Almost exempt from domestic anxieties, the United States are also happy in the non-existence or trivial importance of foreign relations. There is, indeed, always a diplomatic squabble with England or with Canada, and the Secretary of State has the opportunity of indulging in patriotic protests and threats, but it is highly improbable that for an indefinite time America should be engaged in any serious quarrel. The republic is perhaps already the strongest of political communities, and its population and resources are constantly increasing. The government of the country is perhaps not theoretically perfect, but the results are, on the

[1] The Post, Washington, D. C., 1881.

whole, satisfactory. It is a proof of the excellence of a machine that it can be regulated and superintended without the exercise of extraordinary skill."

In addressing the graduates of a Law School in a western state recently, the orator of the occasion said: "We are attempting to govern 40,000,000 of people — within your lifetime it may be nearly 100,000,000 of people — upon a continent reaching from ocean to ocean, and stretching from the frigid to the torrid zone, with interests more various and more diverse than ever before tested the political wisdom of the statesman; a nation which for a century has been the asylum of the oppressed, *and of the felons of the whole world;* a nation of born egotists, where every man has just enough education to have an opinion of his own upon every conceivable subject, especially upon the structure of society and the best theory of government, — the very things he knows least about; a nation that started out with an illogical and dangerous political sophism as to the natural — that is, the *uneducated* — capacity of man for self-government; a nation whose great cities and centres of influence, whence our political literature emanates, are already controlled by the moral and political ignorance of Great Britain and Europe. I say we are trying the experiment of maintaining such a government, with such material and such interests. Some people are sanguine enough to conclude that because we have succeeded thus far our future success is assured and not difficult. . . . Gentlemen, you come upon the stage of action at a period in social experiment and political history requiring broader learning and greater wisdom than even the founders of the republic possessed. They founded a republic in a Garden of Eden upon a virgin continent, where labor of all kinds was in demand and remunerative; where, though the conditions of life were rigorous, they were equable, where both wealth and destitution were almost unknown; where the dullest intellect could perceive, and the

most abandoned character appreciate, that it was easier to earn a living within the law than without it; where the power of capital was yet unknown to labor, where the despotism of capital was yet unfelt by labor."

The author of this treatise does not sympathize with the opinions of the optimist or the pessimist in regard to the future of America. He believes that a truthful representation of the actual condition may be found in a middle statement; and while he agrees with the English journal just quoted as to the excellence of the organic constitution of the American Republic, he is not, on the other hand, blind to the dangers incident to ignorance or corruption on the part of the administrators of the American government, or of their constituents. It is, unfortunately, too true that there is a large class of politicians in the United States who do not see — or affect not to see — danger to the republic as a result of the indiscriminate extension of the franchise to ignorant and unqualified masses, whether white or black, native or foreign; and this reflection opens a wide and profitable field for the attention of the American political reformer.

§ 173. In the single particular of representation in the senate of the United States (unless the independent control of the return of the electoral vote by the states may be considered an exception) is the *equality*, not to mention the *rights* of the several states, as autonomous organizations, practically existent to-day as it was on adoption of the original federal constitution. And this equality of the states on the floor of the senate, and in the matter of representation and action in the electoral college, is doomed to disappear, if propositions recently advanced and seriously recommended are adopted.[1]

[1] Debates in Congress, Congressional Record, 1876, 1880. See *passim*, "The Future of the Republican Party," North American Review, December, 1880; "Controlling Forces in American Politics," *Ib.* January, 1881; "The Mission of the Democratic Party," *Ib.*; "General Grant and a Third Term," *Ib.* April, 1880; "General Grant and Strong Government," *Ib.* May, 1880.

§ 174. "There has been, for twenty years, a steady and persistent effort to concentrate in the executive branch the powers and duties of the House. By the executive branch we mean the president, and the senate in its executive capacity. This aggression must be successfully resisted, or the entire character of our government will be radically changed. If the process of absorption is to go on, year after year, slowly, and almost imperceptibly, but not the less surely, transferring the rights of the people to the guardianship of the executive machinery, we shall drift into danger from which there will be no peaceful exit."[1]

§ 175. A married woman may be naturalized,[2] and that without the concurrence of her husband;[3] but the statutes of naturalization do not apply to Indians.[4]

Congress, having prescribed a uniform rule of naturalization, may give to the state courts jurisdiction under it,[5] and to the territorial courts.[6]

The proceedings in reference to naturalization of *aliens* are liberally construed, and *every* intendment is in their favor.[7]

It is not necessary that the record of naturalization should show that all the legal prerequisites were complied with, the judgment being conclusive of such compliance.[8]

The powers conferred upon the courts to naturalize aliens *are judicial* and not ministerial, and require an examination into each case, sufficient to satisfy the court.[9]

Previous residence may have been not uninterrupted.

[1] The Post, Washington, D. C.

[2] *Ex parte* Marianne Pic, 1 Cr. C. C. 372.

[3] Priest *v.* Cummings, 16 Wend. 617.

[4] 7 Opinion Attorneys General, 746.

[5] State *v.* Penney, 5 Eng. 621.

[6] Biddle *v.* Richard, Cl. & Hall, 407. But see *Ex parte* Knowles, 4 Am. L. R. 598; S. C. 5 Cal. 300; Hagan *v.* Dudley, 10 Law Rep. 371.

[7] 16 Wend. 617.

[8] Stark *v.* Chesapeake Ins. Co., 7 Cr. 420; Spratt *v.* Spratt, 4 Pet. 406; Ritchie *v.* Putnam, 13 Wend. 524; McCarthy *v.* Marsh, 1 Seld. 263, 278. And see Campbell *v.* Gordon, 6 Cr. 176.

[9] In the matter of Clark, 18 Barb. 444.

§ 176. In several cases which came before the Mixed Commission on British and American Claims, Treaty of Washington, May 8, 1871,[1] women born within the United States, and always domiciled there, were allowed standing before said Commission as British subjects as a result of their marriage to British subjects, though their husbands had died before the filing of their memorials.[2]

The same Commission dismissed a claim filed as the claim of a British subject, "without prejudice to the prosecution of the claim elsewhere," in a case submitted by the widow of an American citizen, under this state of facts. The woman was born in Ireland in 1814, and in 1817 came to the United States, where she remained three years; she then returned with her family to Ireland, and resided there till 1837, when she returned to the United States, and in 1839 married a citizen of the United States. The husband died in 1849. It appeared in evidence that the widow continued to reside in the United States, and was residing in the United States when she presented her claim as a British subject to the Commission; but that in 1862 she registered herself at the British consulate in New Orleans as a subject of Her Majesty.[3]

In another case the commissioners rendered the following decision: —

"The first thing to be decided in this case is whether the commissioners have jurisdiction, which depends upon whether the claimant is, within the meaning of the treaty, a British subject.

"That he is, in fact, a British subject, there is no doubt; but it is contended that, being domiciled in the United States,

[1] Calderwood's, Molyneux's, O'Bryan's, and Barton's Cases.

[2] Report by Her Majesty's Agent on the Mixed Commission on British and American Claims, Library of Congress, and Library of State Department, Washington, D. C.

[3] Mrs. Brand's Case, *ib.* pp. 20, 21, 22.

he is not one of those intended by the framers of this treaty to be included in that term. It is undoubtedly true, as appears from various cases cited in the arguments, that the subject or citizen of one state, domiciled in another, acquires in some respects privileges, and incurs liabilities, distinct from those possessed in right of his original birth or citizenship. But he still remains the subject or citizen of the state to which he originally belonged, and we see no reason to suppose that it was the intention of either government to put the limited meaning on the words 'British subject' contended for in the arguments in support of the demurrer, so as to exclude from our jurisdiction a British subject who has never renounced his original allegiance, or become naturalized in any other country." [1]

§ 177. It was held by the Mixed Commission on Mexican and American Claims [2] that a married woman, by the mere fact of marriage, invests herself with the nationality of her husband, without the necessity of any more manifest expression of her wish. The American commissioner (M. Wadsworth), however, sustained the contrary principle in delivering his opinion in another case.[3]

The question how far, and when, a change of nationality may be operative as a result of marriage, was discussed before the Mixed Commission on British and American Claims; [4] and it was held that by marriage alone a woman born in the United States, and there married to a British subject, always domiciled in the United States, became a British subject, and on the death of her husband still retained such national character.[5]

[1] Barclay's Case, Report of Her Majesty's Agent, p. 9.

[2] Martin's Case, reference *supra*, p. 128.

[3] Mary Biencourt's Case, reference *supra*, p. 139.

[4] Calderwood's, Molyneux's, O'Bryan's, and Barton's Cases, Report of Her Majesty's Agent, pp. 337–341.

[5] See Countess of Conway's Case, 2 Knapp, P. C. Rep. *contra*.

"The grounds on which this decision was made by the Commission were not formally stated, but were understood to be that by international law the national character of the wife was to be considered that of her husband, and that on his death she still retained the national character acquired by her marriage.

"Of the first branch of this proposition there would seem to be no question, except so far as raised in the British tribunal referred to, where the domicile of the wife had never followed the national character of the husband. Governor Lawrence, in his tract on the 'Disabilities of American Women married abroad,' plainly recognizes the principle as settled by the international law. (pp. 10, 22.) Mr. Attorney-General Stanbery expressly accepted it as the rule.[1] And Lord Chief Justice Cockburn states[2] that this is the law of all countries 'except where the English law prevails.' The decisions of the British Privy Council, passing upon the question purely as one of international law, in the construction of the conventions with France, where the language used was identical with that used in the Treaty under which this Commission sits, recognize, as we have seen, the same rule, with the single qualification above noted in respect to domicile."[3]

§ 178. The Court of Commissioners of Alabama Claims, in their interpretation of the organic act creating the court, and providing for the distribution of the money paid to the United States by Great Britain, in conformity with the award at Geneva, decided two points of interest in this relation, in the case of Schreiber and Meyer *v.* The United States. The act of Congress of 23 June, 1874, provided that no claim should be

[1] Attorney-General's Opinions, Vol. I. p. 7.

[2] Nationality, p. 24.

[3] Her Majesty's Counsel, J. Mandeville Carlisle, *arg.* See Report of Agent, pp. 339, 340.

allowed by the court "arising in favor of any person not entitled at the time of his loss to the protection of the United States in the premises." The court had previously determined that British subjects were not entitled to share in the distribution under the act.

Schreiber was a native of Prussia, and Meyer of Hamburg. They were partners in business at Singapore, and had accepted drafts drawn upon a cargo of rice on board the Martaban, destroyed by the Alabama 24 December, 1863. At that date Meyer had acquired a commercial domicile at Singapore, having taken out a certificate of naturalization as a British subject, in accordance with the Act No. XXX. of 1852, passed by the government of the East India Company. This certificate entitled him, within the territories under the government of the East India Company, to be deemed a natural-born subject of Her Majesty, as if he had been born within the said territories, and gave him, within the said territories, all the rights, privileges, and capacities of a subject of Her Majesty born within the said territory." In 1864 Meyer returned permanently to Hamburg.

The court, *Jewell*, *J.*, held, *first*, that foreigners who never had resided in the United States, yet who had laden their property on board of American vessels, were entitled, as to such property, to protection in the premises, and might recover for its value if destroyed; *second*, that Meyer's rights as a British subject were limited to the territories of the East India Company, and not being a British native-born subject, the circumstance that he held such qualified naturalization rights did not prevent his recovery in this suit.[1] *Rayner*, *J.*, dissenting.

[1] Report from the Secretary of State with Accompanying Papers relating to the Court of Commissioners of Alabama Claims, p. 105. Washington, 1877.

See also page 17 of same volume for case of Rodocanochi, Sons & Co. *v.* United States, where one of the firm had been naturalized in Great Britain, the domicile of the firm being in Italy.

§ 179. Since the passage of the act of July 27, 1868, the United States, as heretofore indicated, have entered into treaty stipulations with nearly all the nations of Europe, by which the contracting powers mutually concede to subjects and citizens the right of expatriation, *on conditions and under qualification*. And if there shall arise conflict between the above act of Congress and any treaty in this matter, it would seem that the treaty must be held to be of higher dignity and paramount; for the treaty is a contract between nation and nation in derogation of international law, and any case arising under treaty or convention would be subject to construction of public law, as varied or modified by treaty stipulations.

In the matter of residence, as a preliminary qualification for naturalization, many nations have recently entered into treaty stipulations, by the terms of which the contracting powers have agreed to make an uninterrupted residence of five years in the adopted country a necessary qualification for admission to citizenship.[1] These treaties contain a provision providing for the punishment, in case of return to the native country, of a naturalized citizen or subject for offences committed against the country of adoption before emigration; and a provision for renunciation of citizenship by naturalization, on the return of the individual to the country of birth, and a residence of two years. Under these treaties the consideration what shall constitute "uninterrupted residence" within the meaning of the clause remains; and questions of

[1] Austria and the United States, Sept. 20, 1870; Grand Duchy of Baden and the United States, July 19, 1868; Bavaria and the United States, May 26, 1868; Belgium and the United States, Nov. 16, 1868; Grand Duchy of Hesse and the United States, Aug. 1, 1868; Mexico and the United States, July 10, 1868; North German Union and the United States, Feb. 22, 1868; Sweden and Norway and the United States, May 26, 1869; Würtemberg and the United States, July 27, 1868; Denmark and the United States, July 20, 1872; Ecuador and the United States, June 28, 1872. See Treaties and Conventions between the United States and other Powers since July 4, 1776. Washington, Government Printing Office, 1871.

difficulty and embarrassment will doubtless continue to arise on the construction of this clause. And, as between the contracting parties to a treaty containing a stipulation in these or similar terms, the objection is that, on this point of residence, it may be open to the nation whose convenience in the particular case it suits to deny the conclusiveness, as evidence of nationality, of a letter or certificate of naturalization. We have already seen that in practice the nations generally, in the absence of treaties, concede this character to a letter or certificate of naturalization regularly issued under municipal law.

§ 180. By the terms of the treaty of naturalization between the United States of America and Great Britain, May 13, 1870, provision is made for the naturalization in either country of the subjects or citizens of the other, as well as for the renunciation of such acquired citizenship in such manner as shall be agreed upon by the governments of the respective countries. And the act heretofore referred to [1] contains provisions from which it appears that Parliament has acted upon and adopted the substantial recommendations contained in the report of Her Majesty's commissioners. The first conclusion at which these commissioners arrived was: "That under a sound system of international law such a thing as a double nationality should not be suffered to exist." [2]

§ 181. It is the merit of the modern process of naturalization of aliens now under discussion, that the letter or certificate of naturalization constitutes such authentic proof of the nature and character of this intention as may not be questioned or denied. And generally acts of naturalization, by which is meant the admission to citizenship of aliens, are

[1] 33 Vict. c. 14.

[2] Nationality, London, 1869, p. 214; Field's International Code, second edition, pp. 129, 130.

made matter of public record in the country of adoption. But as the country of origin is not regarded in this matter, unless by concession made under treaty, no provision is made for advising or acquainting the country of origin of the transfer of allegiance of her subject or citizen. From this omission, complications and embarrassments in the relations between nations have not infrequently arisen; the recurrence of which might be, to a great extent at least, guarded against, if an official list of naturalized citizens were furnished to the country of origin.

As a method of acquiring citizenship, naturalization — imperfect and subject to some abuse as it still may be in certain quarters and countries — has the peculiar merit that it is made matter of public record, at least in the country of adoption. The learned chief justice, heretofore quoted, suggests that if nationality should become, as it ought, matter of international concern, it would be highly expedient that an arrangement should be made for communicating the names of persons naturalized, or electing between two nationalities, to the agents of the states concerned, to be by them transmitted to their governments, so that no dispute as to the fact could afterwards arise.

§ 182. A year or more after the decisions of Umpire Bartholdi and Umpire Blanc before the United States and Spanish Commission, in the cases of Delgado, Dominguez, and Portuondo, heretofore cited,[1] a change in the *personnel* of the commission occurred, and Count Lewenhaupft[2] became umpire. Shortly after this change, the cases of Buzzi and San Pedro, claiming to be citizens of the United States by naturalization, came before the same commission. And upon disagreement on the part of the arbitrators on the part of

[1] *Supra*, pp. 78, 79, 80, 81.

[2] Envoy Extraordinary and Minister Plenipotentiary from Sweden to the United States.

the two governments, on the question of the citizenship of claimants, the question was referred to the newly accredited umpire (Lewenhaupft), who decided against the claimants in an opinion reversing the decisions of his predecessors, Bartholdi and Blanc. The language in which the opinion of Umpire Lewenhaupft is expressed makes it plain that the umpire has followed Calvo in a grave and inexcusable error heretofore exposed in this treatise and elsewhere.[1]

The decision of Umpire Lewenhaupft, which is here questioned, is in these words: "The umpire is of opinion that, according to international law, every country has a right to confer by general or special legislation the privilege of nationality upon a person born out of its territory, *but in the absence of special consent or treaty such naturalization has, within the limits of the country of origin, no other effect than the government of said country chooses voluntarily to concede.*"—(Buzzi's Case.) "*In the absence of consent or treaty, naturalization abroad has, within the limits of the country of origin, no other effect than the government of said country chooses voluntarily to concede.*" — (San Pedro's Case.)

The propositions are altogether untenable under modern international law, and are contrary to all precedent in modern times. They are at variance with the settled practice and policy of the United States; and the Secretary of State of the United States has instructed the advocate of the United States so to inform the commission and the umpire.[2]

§ 183. Of the five years' uninterrupted residence clause in the treaty between the United States and Prussia, on behalf of the North German Confederation, of the 22d of February, 1868, Lord Chief Justice Cockburn says: "This treaty is ambiguous, and open to difficulty on two points. 1. It is left uncertain whether the five years' residence required by the first article is to run from the time of the natu-

[1] Pages 64, 65.

[2] Opinions of Attorneys General of the United States, Vol. XII. p. 20.

ralization, or whether prior residence will be available to satisfy the condition; 2. It is left in doubt whether, on naturalized subjects quitting the country of adoption *sine animo revertendi*, and returning to their native country, and thereby losing the citizenship of the former, the original nationality would revert." [1]

The treaty has been the subject of much criticism; and various bills are now pending before the Congress of the United States, having in view the modification or the abrogation of this treaty. A member of the United States House of Representatives,[2] who was in Berlin in 1879, records this treaty as the crowning work of Mr. Bancroft's diplomatic career, and says that it works satisfactorily.

In commenting upon this treaty soon after its conclusion, it was said by another author: [3] "This treaty gives a satisfactory solution to the question presented by Lincoln, in his message of the 8th of December, 1863. In this message attention was called to the fact that foreigners had frequently been naturalized in the United States for the purpose of escaping obedience to the laws of their native country, to which, as soon as naturalized, they would return, claiming for all time the protection of the government of the United States. To prevent this abuse he declared it was necessary to fix some period, on the expiration of which foreigners who had been naturalized in the United States, and had returned to their native country, may not claim the protection of the republic."

[1] "Numerous cases which have recently occurred in Germany, and have been the subject of diplomatic intervention by the United States of North America on behalf of naturalized citizens of German extraction, furnish an illustration of the justness of this criticism; and indicate that the treaty does not operate to the satisfaction of American citizens of German extraction." — *Foreign Relations of the United States*, title Germany. 1879, Washington, D. C.

[2] Hon. William D. Kelley, Letters from Europe. Porter & Coates: Philadelphia.

[3] Calvo, Derecho Internacional, Paris, Vol. I. p. 288 *et seq.* note.

§ 184. The zeal and active efforts of the late United States Minister at Berlin,[1] in behalf of individuals of German extraction who had been naturalized in the United States, and who, on return to their native country, were arrested and held to do military duty in the German army, had much to do with bringing about the physical prostration which resulted in death at his post.[2]

In commenting upon the vigorous and almost universal impressment of men for military duty by the German chancellor, a Washington journal of a recent date[3] used this language: —

"Every increase of the German army sends a much larger number of Germans to the United States than are added to the military establishment of William's empire. Bismarck has been the most successful emigration commissioner we have ever had in Europe, with the possible exception of famine."

Says another journal[4]: —

"The emigration from Germany to this country was twenty per cent greater last year than in any preceding. The military laws incite emigration, and there is no doubt that Bismarck, who has been attempting to prevent the departure of his subjects, will, if the exodus continues, find some means to compel them to stay at home."

§ 185. Interest, not less than a wise policy and the good faith of the United States, requires that the rights of naturalized citizens abroad should be sacredly guarded and protected. It is believed that 400,000 immigrants from Europe

[1] Bayard Taylor.

[2] Letters from Europe, by Hon. William D. Kelley, M. C., p. 39.

[3] The Post, April 15, 1880. See also The Political Comedy of Europe. Paris and London, 1880. The reputed author is Mr. Daniel Johnson, an American ex-diplomatist. The work is a satire mainly directed against German militaryism.

"Germany," wrote a French *attaché* at Berlin to his government a few years before the Franco-Prussian war, "is not a country which has an army: it is an army which owns a country."

[4] The Capital.

will be added to the population of the United States this year. There were 319,000 in 1854, and this is the largest number for any one year.

Over 1,900 immigrants arrived in New York April 23, 1880, in addition to 4,238 landed the day before, — a total of 6,168 for two days. This will make an aggregate of over 30,000 arrivals for the month, and it is estimated that the total for April will exceed 46,000, as compared with 11,408 for the same period last year. The estimate for May is about 50,000, as against 18,520 for the same month last year. The majority of the immigrants are agriculturists, and have their passage tickets to different parts of the West. The greater number of them are German and Irish. The number of foreign-born inhabitants in the United States in 1870 was nearly 6,000,000.[1]

[1] In the tide of emigration flowing here from Europe the largest volume of it, in proportion to population, still comes from Ireland, which contributed during the month of May to the port of New York alone 13,596 immigrants. Germany, with probably ten times the population of Ireland, contributed only about twice that number, or 27,109. England, with about three times its population, contributed only a little over one half as much, or 7,797. France proves at once her great prosperity and the love of Frenchmen for their own country in the very small contribution which she made in that month to the European exodus, — only 544. The autocratic institutions of Russia do not seem to discontent her people very much, at least not to the extent of driving them from home, for they added only 218 to the American population for the month of May. Sunny Italy only sent us 1,694. Strange to say, the countries that equal, if they do not exceed Ireland in their proportionate contributions to the tide of emigration are Sweden and Norway, where both the political and social institutions are calculated to conduce most strongly to the prosperity and contentment of the people. Sweden, out of her population of about 4,000,000, contributed 12,563; and Norway, out of her population of about 2,000,000, 3,189. It would appear from these figures that considerations of political rule and land tenure do not exercise such a powerful influence on expatriation as has been supposed, for we find Russia, where these considerations might be supposed to favor expatriation, sending us only 218 of her 80,000,000, and Sweden and Norway, self-governing communities with a population of peasant proprietors, sending us 15,752 of their 6,000,000. The subject is well worthy of a thorough study in America as well as in Europe. — *The Republic, Washington, D. C.*, 18th June, 1881.

The late Senator Morton had occasion to investigate the subject of Chinese immigration to the United States; and referring to the controversies growing out of it, he came to the conclusion that the appropriate solution of the question was to be found in the naturalization of the Chinese.[1]

Under existing law of the United States, the Chinese may not be naturalized.[2]

§ 186. In his last message to Congress (Dec. 5, 1876), President Grant, referring to naturalization and expatriation, said: "I suggest no additional requirements to the acquisition of citizenship beyond those now existing, but I invite the earnest attention of Congress to the necessity and wisdom of some provisions regarding uniformity in the records and certificates, and providing against the frauds which frequently take place, and for the vacating of a record of naturalization obtained in fraud. These provisions are needed in aid and for the protection of the honest citizen of foreign birth, and for the want of which he is made to suffer not infrequently. The United States has insisted upon the right of expatriation, and has obtained after a long struggle an admission of the principles contended for by acquiescence therein on the part of many foreign powers and by the conclusion of treaties on that subject. It is, however, but justice to the government to which such naturalized citizens have formerly owed allegiance, as well as to the United States, that certain fixed and definite rules should be adopted gov-

[1] See Incomplete Report of Minority of Congressional Committee on the Chinese Question, 44th Congress, 2d Session. See also Chinese Immigration, Seward, Scribner, 1880.

[2] A native of China, of the Mongolian race, is not a "white person" within the meaning of sect. 2,169, as amended in 1875, and therefore is not entitled to become a citizen of the United States. In the Matter of Ah Yup, United States Circuit Court, California, 5 Sawyer, p. 155. And Charles Miller's Application, United States Circuit Court, New York, *infra*, p. 230. Moy Sam's case, before Moran, J., Chicago, Ill., March 1, 1881.

erning such cases and providing how expatriation may be accomplished. While emigrants in large numbers become citizens of the United States, it is also true that persons both native [born] and naturalized, once citizens of the United States, either by formal acts, or as the effect of a series of facts and circumstances, abandon their citizenship and cease to be entitled to the protection of the United States, but continue on convenient occasions to assert a claim to protection in the absence of provisions on these questions. . . . The delicate and complicated questions continually occurring with reference to naturalization, expatriation, and the *status* of such persons as I have above referred to, induce me to earnestly direct your attention again to these subjects."

§ 187. In a former message (Dec. 7, 1875), the President called attention to the fact that "fraud being discovered, however, there is no practicable means within the control of the government by which the record of naturalization can be vacated; and should the certificate be taken up, as it usually is, by the diplomatic and consular representatives of the government to whom it may have been presented, there is nothing to prevent the person claiming to have been naturalized from obtaining a new certificate from the court in place of that which has been taken from him."

§ 188. The want of a proper remedy and means for the vacating of any record fraudulently made, with a provision in the law for punishing the guilty parties to the transaction was, and is, *casus omissus*. And it was under this view of the existing law that the President urged action by Congress. Attention was also called to the necessity of legislation concerning the marriages of American citizens, contracted abroad, and concerning the *status* of American women who may marry foreigners, and of children born of American parents in a foreign country.

§ 189. The original naturalization laws only extended to free "white" persons. But when Congress was engaged in framing the law of July 14, 1870, Senator Sumner moved to strike out the word "white." Senator Williams then proposed to insert at the end of the section: "But this act shall not be construed to authorize the naturalization of persons born in the Chinese Empire."

The following debate is then reported: —

MORTON. — This amendment involves the whole Chinese problem. Are you prepared to settle it to-night?

STEWART. — Without discussion.

MORTON. — And without discussion? I am not prepared to do it.

SUMNER. — The senator says it opens the great Chinese question. It simply opens the question of the Declaration of Independence, and whether we will be true to it. "All men are created equal," without distinction of color.

McCreery offered as an amendment to the amendment: "Provided, that the provisions of this act shall not apply to persons born in Asia, Africa, or any of the islands of the Pacific, nor to Indians born in the wilderness."

Warner offered as a substitute for the original amendment: "That the naturalization laws are hereby extended to aliens of African nativity and to persons of African descent." This was concurred in, — yeas 20, nays 17.[1] Such was the law on the statute book when the revisers of the United States Statutes prepared their revision, which, in the first draft, was formulated as follows: "The provisions of this title shall apply to aliens of African nativity and to persons of African descent."[2]

§ 190. In 1875, when this section was before Congress for amendment, attention was called to the fact that, as the law stood, it would authorize the the naturalization of Asiatic

[1] Sect. 7 of the Act of July 14, 1870. [2] Sect. 2169.

immigrants; and the above section was amended by inserting in the first line, after the word "aliens," the words, "being free white persons, and to aliens," etc.[1]

The decisions of Sawyer, J.,[2] in Ah Yup's Case, and of Choate J.,[3] on Charles Miller's application, rest upon the law as amended. The protection of the civil rights of Chinamen in the United States are guaranteed by treaty stipulations. Article VI. of the treaty of July 28, 1868, with China, in effect secures to Chinamen the right to reside in the United States upon the same terms as the subjects of Great Britain and France, and this implies the right to follow any lawful pursuit or calling not prohibited to the subjects of these two powers.[4]

§ 191. The opinion of Akerman, Attorney-General of the United States in 1871, in the case of Moses Stern,[5] is sometimes cited in denial of the proposition that the record of naturalization is conclusive upon all the world, and may not be impeached, except for fraud, or want of jurisdiction in the court making the record. It is not authority for any such position. This opinion was given in a case which turned upon the construction of the Treaty of 1868 between the United States and the North German Confederation; and the conclusion was doubtless greatly influenced, and may have been justified, perhaps, by the circumstance that Stern, while in Prussia, never avowed himself an American, but, on the contrary, took a passport as a Prussian. When examined and tested in the light of international law, by the practice of

[1] Act of Feb. 18, 1875.

[2] United States Circuit Court, California, April 29, 1878.

[3] *Ib.*, New York, July, 1879.

[4] Chapman *v.* Toy Long, 4 Sawyer, U. S. Cir. Ct. Rep. p. 28. See also, *In re* Ah Fong, 3 Sawyer, U. S. Cir. Ct. Rep. p. 144; United States *v.* Jackson, 3 Sawyer, U. S. Cir. Ct. Rep. p. 59. See also Chy Fung *v.* San Francisco, 92 U. S. Rep. p. 275.

[5] Opinions of Attorneys-General, Vol. XIII. p. 376.

nations, and under authoritative precedents, it will be found to stand alone. Akerman adds: "But recitations in the record of matters of fact are binding only upon parties to the proceedings and their privies. The government of the United States was no party, and stands in privity with no party to these proceedings. And it is not in the power of Mr. Stern by erroneous recitations in *ex parte* proceedings to conclude the government as to matters of fact." (*Sic.*) It will appear from this extract that the attorney-general, in this case, failed to recognize the fact that the certificate or record of naturalization is in the nature of a judgment *in rem*, and that the proceeding to obtain it is invariably *ex parte*. And he seems to be oblivious of the fact that these records are made, or at least are supposed to be made, by the court, and not by the applicants for admission to citizenship.

In Levy's Case,[1] Williams, Attorney-General, said that the proceeding to obtain naturalization was a judicial act, and that it has the force and effect of a judgment.

§ 192. It follows, if the proposition heretofore laid down in this treatise be correct, that in absence of treaty stipulations or concessions as to naturalization, the matter, in practice, is within the exclusive control of the power issuing the certificate or letter; and the judgment of the tribunal or court, to whom the power to grant the same is confided by the supreme power in the state, is conclusive as to law and fact everywhere and upon all the world.[2]

[1] 14 Opinions Attorneys General, p. 509.

[2] United States *v.* The Acorn, 2 Abbott's U. S. Rep. 443; The People, &c., *v.* McGown, 77 Ill. 644, and cases cited. See opinion of Blatchford, J., Circuit Court of the United States for the Southern District of New York, in the matter of Peter Coleman, on *habeas corpus*; opinion of Freedman, J., Superior Court of New York, in Christern's Case, 1879. See letter of Mr. Evarts to Mr. Fish, Nov. 12, 1879, Foreign Relations of the United States, 1880, p. 952; also the decision of Sir Edward Thornton (umpire of the United States and Mexican Commission), in case of heirs of Shreck.

"It is an universal principle that where power or jurisdiction is delegated to any public officer or tribunal over a subject-matter, and its exercise is confided to his or their discretion, the acts so done are binding and valid as to the subject-matter; and individual rights will not be disturbed collaterally for anything done in the exercise of that discretion within the authority and power conferred. The only questions which can arise between an individual claiming a right under the acts done and the public, or any person denying its validity, are, power in the officer and fraud in the party. All other questions are settled by the decision made or the act done by the tribunal or officer, whether executive, legislative, judicial, or special, unless an appeal is provided for, or other provision, by some appellate or supervisory tribunal, is prescribed by law." [1]

§ 193. When the inquiry is, Was there fraud? it will be instructive to refer to the three rules laid down in Conard *v.* Nicoll,[2] and which were declared incontrovertible by the Supreme Court of the United States.[3]

When the inquiry is, Had the tribunal power or jurisdiction? it will be instructive to consult Robinson.[4]

In another case the United States Supreme Court said: "The judgment of confirmation raises a presumption conclusive, while that judgment stands unreversed, that whatever was necessary to its legality was proved and found by the court, and it cannot be impeached collaterally." [5]

"The distinction," said Longyear, J., announcing the decision in The Acorn, "between cases in which judgments may and those in which they may not be impeached collater-

[1] United States *v.* Arredondo, 6 Pet. (U. S.) 729–730, and cases cited.
[2] 4 Pet. (U. S.) p. 295.
[3] United States *v.* Arredondo, *supra.*
[4] Robinson's Practice, Vol. VII. chap. i. tit. i.
[5] Voorhees *v.* Bank of the United States, 10 Pet. (U. S.) p. 193.

ally, as derived from the authorities, and founded in common sense, may be stated thus: They may be impeached by facts involving fraud or collusion, but which were not before the court or involved in the issue or matter upon which the judgment was rendered. They may not be impeached for any facts, whether involving fraud or collusion or not, or even perjury, which were necessarily before the court and passed upon."

§ 194. It has been from time to time urged that the same effect should not be given to a certificate of naturalization as is given, generally, to the judgments, sentences, or decrees of courts of record; and that naturalization proceedings, as usually conducted, are virtually *ex parte*. But the answer to these suggestions is that the proceeding to obtain naturalization, in the United States at least, is a judicial one; and it is before a court which exercises a peculiar jurisdiction. The proceeding is, as it is technically termed, *in rem*, and the general rule, as to the effect and conclusiveness of a judgment, sentence, or decree thereupon pronounced, is familiar.[1]

A valuable and instructive discussion of the plea of *res judicata* as estoppel, and of the replication thereto, is found in Robinson's Practice,[2] where the leading cases are compared, criticised, and distinguished.

§ 195. What the policy of the Executive Department of the United States has been may be inferred from what follows.

Under date Oct. 14, 1869, the Department of State of the United States issued circular instructions to diplomatic agents and consuls, warning them to issue passports only to citizens of the United States; and requiring of them vigilance in ascertaining in all cases whether applicants were *bona fide* citizens. We quote from this circular, as follows: —

[1] Starkie on Evidence, pp. * 241–248.

[2] Vol. VII. chap. i. tit. i.

"Cautious scrutiny is enjoined in such cases, because evidence has been accumulating in this department for some years that many aliens seek naturalization in the United States without any design of subjecting themselves by permanent residence to the duties and burdens of citizenship, and solely for the purpose of returning to their native country and fixing their domicile and pursuing business therein, relying on such naturalization to evade the obligations of citizenship to the country of their native allegiance and actual habitation. To allow such pretensions would be to tolerate a fraud upon both the governments, enabling a man to enjoy the advantages of two nationalities, and to escape the duties and burdens of each.

"The United States have treaties with several powers regulating the rights of naturalized citizens of the United States on their return to their native lands. The protection which the passport gives is regulated in each such case by the terms of the treaty."

Again, "It is provided by the laws of 1855[1] that persons born out of the limits and jurisdiction of the United States, whose fathers were or shall be, at the time of their birth, citizens of the United States, shall be deemed and considered to be citizens of the United States, provided that the right of citizenship shall not descend to persons whose fathers never resided in the United States. Within the sovereignty and jurisdiction of the United States such persons are entitled to all the privileges of citizens; but, while the United States may by law fix or declare the conditions constituting citizens of the country within its own territorial jurisdiction, and may confer the rights of American citizens everywhere upon persons who are not rightfully subject to the authority of any foreign country or government, it ought not, by undertaking to confer the rights of citizenship upon the subject of a foreign nation who had not come within our territory, to inter-

[1] 10 Stat. at Large, p. 604.

fere with the just rights of such nation to the government and control of its own subjects. If, by the laws of the country of their birth, children of American citizens born in such a country are subjects of its government, the legislation of the United States will not be construed so as to interfere with the allegiance which they owe to the country of their birth while they continue within its territory. If, therefore, such a person, who remains a resident in the country of his or her birth, applies for a passport, as a citizen of the United States, such passport will be issued in the qualified form.

"The same law of 1855 further provides that any woman who might lawfully be naturalized under the existing laws, married, or who shall be married, to a citizen of the United States, shall be deemed and taken to be a citizen. The recognition of this citizenship will be subject to the qualification above referred to."

§ 196. The conflict which existed for some time between the views of the executive and the judicial department of the Government of the United States on the subject of expatriation[1] has been accounted for by pointing out that the policy of the federal judiciary was shaped by Marshall and other Federalists and Whigs who followed Hamilton, while the policy of the executive department was formulated and generally controlled by statesmen of the Jeffersonian or Democratic school.

Mr. Ashton accounts for the contrariety between the judiciary and executive and the legislative departments as follows: "While the tendency of the judicial mind in this country has been against the right of a citizen to expatriate himself, the executive and legislative departments of our government have, from the beginning, proceeded upon the notion that such a right existed, and could not be denied. The explanation of the contrariety of opinion on this subject is found in the fact that the judicial department has had

[1] *Supra*, pp. 118, 119.

occasion to deal with the doctrine, in its application to citizens of the United States who have asserted the right as against our Government, whereas the other departments have been called upon to consider the question principally in its relation to the citizens or subjects of other countries who have sought to adopt our allegiance. The discussion of the subject finally led to the passage of the Act of Congress, July 27, 1868. 15 Statutes, p. 223.[1]

§ 197. The present condition of the laws of the United States relating to citizenship and naturalization leave something to be desired in the matter of details.

Among other things, the law should prescribe uniformity in the forms and blanks used in proceedings for naturalization; and the courts intrusted with the power to naturalize should be required to keep a record of the declaration of intention, as well as of the certificate of naturalization, certified copies of which should be required to be executed, one copy for the use of the applicant, and one copy to be forwarded to the Department of State.[2]

It is very desirable that there should be in all countries a regular system of laws for naturalization. The actual crude condition of the laws of the United States should be remedied by enactments that would make the intention, as indicated by permanent residence, a sufficient proof to entitle to full citizenship. It has been said that the original law was the best. The taking out of two papers is cumbersome and unnecessary. It was based on the technical theory of, first, affiliation, and, secondly, adoption. A law which would confer citizenship upon any one who solicits it after a certain residence would seem to be all-sufficient.

[1] J. Hubley Ashton, Counsel for the United States, *Arg.* before the United States and Mexican Commission, in De Leon *v.* Mexico, No. 593.

[2] See *passim*, Bill to establish a uniform rule and to provide certificates of naturalization. — 46th Congress, 2d Session, H. R., 4384.

§ 198. Attention has been heretofore directed to this matter, and it is receiving the consideration of a committee of the present Congress.

As the laws of naturalization are enacted by the national legislature, it is incumbent upon that body to insist upon a faithful administration by the officers and the courts in all the proceedings had thereunder.

An alien (*alienus alienigena*), under the common law of England, was, generally speaking, one born in a foreign country, out of the allegiance of the king.[1] Two things usually combine to give the character of alien to an individual: first, birth in a foreign country; secondly, birth out of the allegiance of the sovereign.

By the laws of the United States all persons born or naturalized in the United States, *and subject to the jurisdiction thereof*, are citizens of the United States, and of the state wherein they reside.[2] But the word "jurisdiction" must be understood to mean absolute or complete jurisdiction, such as the United States had over its citizens before the adoption of this amendment. Aliens, among whom are persons born here and naturalized abroad, dwelling or being in this country, are subject to the jurisdiction of the United States only to a limited extent. Political and military rights and duties do not pertain to them.

Persons born in the United States, who have, according to the laws of a foreign country, become subjects or citizens thereof, must be regarded as aliens.[3]

[1] Tomlin's Law Dictionary, word "Alien."

[2] Fourteenth Amendment, Constitution, sect. 1.

[3] Opinion of the Attorney-General to the President, Papers on Naturalization and Expatriation, p. 50. Executive Documents, Washington, D. C., 1873.

The Indian tribes within the territory of the United States are independent political communities, and a child of a member thereof, though born within the limits of the United States, is not a citizen thereof, because not born subject to its jurisdiction. 2 Sawyer, p. 118.

An Indian residing within the United States is not a "foreign citizen or

Two things usually occur to create citizenship by birth: first, birth locally within the dominion [or territory] of the sovereign; secondly, birth within the protection and obedience, or, in other words, within the legiance [or jurisdiction] of the sovereign.[1]

§ 199. Children *sub potestate parentis* follow the condition of the father; or, if no father, of the mother. If of full age, and emancipated, they are subject to the same rules as any adult person.[2]

Under this principle, children of aliens, the accident of whose birth occurs in American soil, and minors commorant in the country, are invested with the national character of the parent.

Formerly the governments of Europe, which were mostly founded on feudal principles, regarded the sovereign as having a kind of property in his subjects or lieges, which bound them to him for life. Liegance, or allegiance, therefore, was a tie which the subject could not sunder at his pleasure. But the practice of all nations to naturalize the subjects of other nations, without inquiry as to the will of their former sover-

subject" within the meaning of sect. 2, art. 3 of the Constitution, and cannot, on the ground that he is a "foreign citizen or subject," maintain a suit in the Circuit Court of the United States (1870). 1 Dillon, U. S. Cirt. Ct. p. 344..

[1] Mr. Justice Story, 3 Pet. U. S. Sup. Ct. Rep. 155.

By the common law a child born within the allegiance of the United States is born a subject thereof, without reference to the political status or condition of its parents. — 2 Sawyer, p. 118.

By art. 3 of the convention of October 20, 1818 (8 Stat. 249), between the United States and Great Britain, it was agreed that the Oregon territory should "be free and open to vessels, citizens, and subjects of the two powers," which convention was continued in force until the convention of June 15, 1846 (9 Stat. 869): *Held*, that during the period of such joint occupation, the country, as to British subjects therein, was British soil, and subject to the jurisdiction of the King of Great Britain, but as to citizens of the United States it was American soil, and subject to the jurisdiction of the United States; and that a child born in such territory in 1823, of British subjects, was born in the allegiance of the King of Great Britain, and not that of the United States. *Id.*

[2] Opinion of Secretary of the Navy. Papers on Naturalization and Expatriation, p. 45. Government Printing Office, Washington, D. C., 1873.

eign, shows that the doctrine of the law of nations, as now accepted, really is that a man may throw off his old allegiance and embrace a new one.

This has always been the American doctrine, and has now become a subject of treaty with Great Britain, all the German States, Denmark, and Sweden. These treaties, recently effected, dispose of many of the intricate questions which formerly arose out of the claim of perpetual allegiance put forth by foreign nations.[1]

By these treaties the rule now prevailing may be expressed generally thus: Continuous residence in this country for five years, and naturalization, effects an entire change of citizenship and allegiance, and all obligations to the mother country are extinguished, except those actually incurred before emigration; these remain if the emigrant return to his native country; but all liability to military duty which he evaded *by* emigration is discharged. But if an emigrant return to his native country, without the intent to return to his adopted country, he is held to have renounced his naturalization. Two years' residence in the native country manifests such intent not to return. A citizen of the United States remains a citizen until he changes his nationality in due and recognized form, and becomes a citizen of some other country.[2]

§ 200. A mere residence abroad, with no apparent intention of returning, does not denationalize an American-born citizen; it only impresses upon him a national character for commercial purposes. He is still bound by the allegiance due to the country of his birth. By virtue of that allegiance *that* country can demand his services whenever they are needed. He is entitled to its protection.[3]

[1] See these treaties, Wharton's Conflict of Laws, pp. 1–20, and Statutes United States, Vols. XVI., XVII.

[2] Opinion of the Secretary of the Navy, *ib.* pp. 43, 44.

[3] Opinion of the Secretary of the Treasury, *ib.* p. 34. In this opinion the several questions propounded by the President have been considered and answered *in extenso*.

§ 201. "The act of Feb. 10, 1855,[1] provides that 'persons heretofore born, or hereafter to be born, out of the limits and jurisdiction of the United States, whose fathers were or shall be at the time of their birth citizens of the United States, shall be deemed and considered, and are hereby declared to be, citizens of the United States: *Provided, however*, That the right of citizenship shall not descend to persons whose fathers never resided in the United States.'

"It will be noticed that the act professes to extend citizenship only to those born abroad whose fathers 'at the time of their birth' are citizens.

"Every independent state has, as one of the incidents of its sovereignty, the right of municipal legislation and jurisdiction over all persons within its territory, and may therefore change their nationality by naturalization, and this, without regard to the municipal laws of the country whose subjects are so naturalized, so long as they remain, or exercise the rights conferred by naturalization, within the territory and jurisdiction of the state which grants it.

"It may also endow with the rights and privileges of its citizenship persons residing in other countries, so as to entitle them to all rights of property and of succession within its limits, and also with political privileges and civil rights to be enjoyed or exercised within the territory and jurisdiction of the state thus conferring its citizenship.

"But no sovereignty can extend its jurisdiction beyond its own territorial limits, so as to relieve those born under and subject to another jurisdiction from their obligations or duties thereto; nor can the municipal law of one state interfere with the duties or obligations which its citizens incur while voluntarily resident in such foreign state, and without the jurisdiction of their own country."[2]

The limitation herein announced in reference to *the effects*

[1] 10 Stat. at Large, 604.

[2] Opinion of the Secretary of State, *ib.* p. 17.

of naturalization belong to an effete jurisprudence; and the above propositions submitted by a former Secretary of State are in conflict with the whole policy of the United States and in direct contradiction of the unbroken practice of the Executive Department. See Opinions of Attorneys-General of the United States, Vol. XII. p. 20.[1]

§ 202. "It is evident from the proviso in the act of Feb. 10, 1855, viz., 'that the rights of citizenship shall not descend to persons whose fathers never resided in the United States,' that the law-making power not only had in view this limit to the efficiency of its own municipal enactments in foreign jurisdiction, but that it has conferred only a qualified citizenship upon the children of American fathers born without the jurisdiction of the United States, and has denied to them what pertains to other American citizens, the right of transmitting citizenship to their children, unless they shall have made themselves residents of the United States, or, in the language of the Fourteenth Amendment of the Constitution, have made themselves 'subject to the jurisdiction thereof.'"[2]

§ 203. "The child born of alien parents in the United States is held to be a citizen thereof, and to be subject to duties with regard to this country which do not attach to the father.

"The same principle on which such children are held by us to be citizens of the United States, and to be subject to duties to this country, applies to the children of American fathers born without the jurisdiction of the United States, and entitles the country within whose jurisdiction they are born to claim them as citizens, and to subject them to duties to it.

"Such children are born to a double character: the citizenship of the father is that of the child so far as the laws of the

[1] See *infra*, pp. 65, 66.

[2] Opinion of the Secretary of State, *ib.* p. 17.

country of which the father is a citizen are concerned, and within the jurisdiction of that country; but the child, from the circumstances of its birth, may acquire rights and owes another fealty besides that which attaches to the father.

"Persons who have formally renounced their allegiance to the United States, and have assumed the obligations of citizen or subject of another power, — in other words, persons who have denationalized or expatriated themselves, — are aliens to the United States, and can become citizens only by virtue of the same laws, and with the same formalities, and by the same process, by which other aliens are enabled to become citizens.

"Having replied to the several questions submitted, I may be permitted to express my opinion of the necessity of legislation to define how and by what acts, whether of commission or of omission, or of both, United States citizenship is lost.

"It has been shown that in some instances recent treaties provide one test; but even in these cases further legislation is needed to relieve the decision in each case of much embarrassment and of much doubt."[1]

§ 204. "It is not easy to define citizenship, and but few have done it, although the general idea of what is included in the term 'citizen' is pretty well understood. All agree that it includes males and females and minors. It includes all those who owe allegiance, fidelity, and support to the government, and who, in return for the same, are entitled to be protected and defended by it. I would define a citizen of the United States to be a native-born or naturalized person, of either sex, who owes allegiance to and is entitled to protection from the United States, or a person who is made a citizen by treaty stipulations or statutory or constitutional law.[2]

"The power of conferring or taking away citizenship rests in

[1] Opinion of the Secretary of State to the President, *ib.* p. 18.

[2] Opinion of the Secretary of the Interior, *ib.* p. 52.

Congress. The Constitution has conferred upon it the power 'to establish a uniform rule of naturalization.'[1] It is impossible to execute this power and make citizenship uniform unless the United States have exclusive control over the subject; and hence it must be admitted that all the powers which the states previously had were surrendered and vested in the nation. This seems so palpably just and necessary that it requires no argument or authority in its support; but, as it may be denied, I venture to refer to the following authorities:

"In 2 Kent Com., 30, it is said, 'The question of citizenship is one of national, and not of individual (or state) sovereignty.'

"Judge McLean, in the Dred Scott case,[2] declares 'that a state may authorize a foreigner to hold real estate, but it has no power to naturalize foreigners and give them the rights of citizens. Such a right is opposed to the acts of Congress and subversive of the federal powers.'

"Attorney-General Bates says: 'Every person who is a citizen of the United States, whether by birth or naturalization, holds his great franchise by the laws of the United States, and above the control of any particular state.'[3]

"Whatever difference of opinion there may be as to what other rights appertain to a citizen, all must agree that he has the right to petition, and also to claim the protection of the government. These belong to him as a member of the body politic, and the possession of them is what separates citizens of the lowest condition from aliens and slaves. To suppose that a state can make an alien a citizen, or confer on him the right of voting, would involve the absurdity of giving him the direct and immediate control over the action of the general government, from which he can claim no protection, and to which he has no right to present a petition.

[1] Art. 4, sect. 8, *ib.*

[2] 19 How. 533.

[3] 10th Opinions, 382.

"Now, admit that a state may confer the right of voting on aliens, and it follows that we might have among our constituents persons who have not the right to claim the protection of the government, nor present a petition to it. But a still greater difficulty remains. Suppose a war should be declared between the United States and the country to which the aliens belong. They, as alien enemies, would be liable to be seized under the laws of Congress, and to have their goods confiscated, and themselves imprisoned or sent out of the country."[1]

§ 205. "The right of protection is not confined to citizens, but extends to denizens and those having their domicile in the United States. All persons, citizens or not, who make the United States their home, whose domicile is here, and who claim the protection of the government, will obtain it if the claim be made in good faith, and the conduct of the party has not been such as to forfeit the claim.

"This was the case of Martin Koszta, who had only declared his intention to become a citizen, and who resided in the United States, but was temporarily absent in Turkey, innocently employed."[2]

This would be a more correct expression of a principle which finds support under international law, if the proposition be qualified, or understood to mean that such protection will be extended to an individual whose person was at the time of injury or arrest literally or constructively under the jurisdictional protection or within the territory of the sovereign or state to whom the appeal is addressed.

§ 206. In a recent case[3] the Supreme Court of the United States maintained the right, under treaty stipulations, of alien

[1] Calhoun (Wheaton's Int. Law, Lawrence's ed., 905).
[2] Opinion of the Secretary of the Navy, *ib.* p. 46.
[3] Hauenstein *et al. v.* Lynham, 100 U S. S. C. Rep. p. 483.

heirs to inherit real estate situate in one of the states of the Union whose law is *contra*. The decision is instructive; and while pointing clearly to the character of the relations of the several states to the United States, the opinion suggests the nature of the obligation assumed by the United States under treaty stipulations in respect to aliens commorant in the territory and to the heirs of such aliens. The appellant was a citizen of Switzerland; and between the Swiss Confederation and the United States there is a treaty guaranteeing the security and full enjoyment of the property, right to administration, succession, etc., on behalf of citizens of either state.[1] A very early case is cited by the court.[2] In 1857 an attorney-general of the United States had given his opinion that "the government of the United States has constitutional power to enter into treaty stipulations with foreign states for the purpose of restricting or abolishing the property disabilities of aliens or their heirs in the several states."[3] The United States is a party to a large number of treaties with foreign states to this effect.[4]

With a large number of foreign states, the United States of America have, at different times, entered into treaty stipulations of similar import and effect with the treaty of May 18, 1847, between the Swiss Confederation and the United States. Some of these are obsolete; but most of them are in force.[5]

[1] Treaty, May 16, 1847, Art. 1.

[2] Ware *v.* Hylton, 3 Dallas, 199 (237).

[3] Cushing, Droit d'Aubaine, 8, Opinions of Attorneys-General, p. 411.

[4] See Treaties and Conventions between the United States and Foreign Powers, title "Real Estate."

[5] Treaties with Italy, France, Bavaria, Colombia (New Grenada), Ottoman Empire, San Salvador, Two Sicilies, Peru, Nicaragua, Hesse, Nassau, Saxony, Würtemburg, Austria, Brazil, Ecuador, Guatemala, Hanseatic Republic, Bolivia, Dominican Republic, Brunswick and Luneberg, Orange Free State, Spain, Prussia, Hawaiian Islands, Portugal, Russia, Hanover, Sardinia. — Treaties and Conventions between United States and Other Powers, p. 1252. Washington, Government Printing Office, 1876.

The purpose of these stipulations is to guarantee full protection in the matter of property rights to aliens, resident or non-resident, who have immediate or descendible interests in real estate and other property situated in the United States. The effect of these treaty provisions is to abolish the property disabilities of aliens, or their heirs, in the several states of the Union. The theory upon which these and similar engagements have been entered into seems to have been founded, in the first instance, on the intention of the sovereign powers of the respective governments to prevent escheat to the state; and the purpose — as is sufficiently manifest — was to protect primarily resident aliens and their resident heirs; and, secondly, non-resident aliens and their non-resident heirs.

PART V.

§ 207. THE following is the provision of the Federal Constitution in reference to citizenship of the United States: —

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." [1]

Desty [2] has digested and grouped the decisions under this section as follows: —

"'Citizen' and 'person' are synonymous terms; and this section refers to natural persons.[3] An incorporated company is not a citizen of the United States, nor a person, within the meaning of this section.[4] 'Citizen' is entirely analogous to 'subject' at common law.[5] A person may be a citizen of the

[1] Constitution of United States, Fourteenth Amendment, sect. 1. See, also, Revised Statutes of the United States, p. 351, sects. 1992–2001.

The language of the Act of Congress (9 April, 1866), defining citizenship, is "That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States." 14 Stats. at Large, p. 27, sect. 1. See United States *v.* Elm, Internal Revenue Record, Vol. XXIII. p. 419, opinion by Wallace, J.

[2] Federal Constitution.

[3] People *v.* C. & A. R. R. Co., 6 Chic. L. N. 280; 6 Bissell, 107.

[4] Insurance Co. *v.* New Orleans, 1 Woods, 85.

[5] United States *v.* Rhodes, 1 Abb. U. S. 39; North Carolina *v.* Manuel, 4 Dev. & B. 20; McKay *v.* Campbell, 2 Sawy. 129.

United States without being a citizen of any state.[1] Women may be citizens.[2] This section does not confer citizenship upon persons of foreign birth.[3] The words 'subject to the jurisdiction thereof' exclude the children of foreigners transiently within the United States, as ministers, consuls, or subjects of a foreign nation.[4] This amendment does not include Indians and others not born in and subject to the jurisdiction of the United States;[5] but an Indian, if taxed, after tribal relations have been abandoned, is a citizen.[6] Colored persons, equally with whites, are citizens;[7] but an escaped slave, resident in Canada, or his children, are not citizens.[8] This section recognizes the difference between citizens of the United States and citizens of the state.[9] The main purpose of this section was to establish the citizenship of the negro.[10] This clause applies only to citizens removing from one state to another.[11] The purpose of this amendment was to secure to the colored race in the South the benefit of the freedom previously accorded to them.[12] Privileges and immunities of citizens include such as are derived from, or recognized by, the Constitution,[13] and are not identical with those referred to in Sect. 2 of Art. 4.[14] This amendment adds nothing

[1] Slaughter House Cases, 16 Wall. 74; United States *v.* Cruikshank, 92 U. S. 543, 1 Woods, 308; Cully *v.* Baltimore, etc. R. R. Co., 1 Hughes, 536.

[2] Miner *v.* Happersett, 21 Wall. 162.

[3] Van Valkenburgh *v.* Brown, 43 Cal. 43.

[4] Slaughter House Cases, 16 Wall. 73.

[5] McKay *v.* Campbell, 2 Sawy. 129.

[6] United States *v.* Elm, 23 Int. Rev. Rec. 419.

[7] *In re* Turner, 1 Abb. U. S. 84.

[8] Hedgman *v.* Board, 26 Mich. 51.

[9] Frasher *v.* State, 3 Tex. Ct. App. 267.

[10] Slaughter House Cases, 16 Wall. 36; Frasher *v.* State, 3 Tex. Ct. App. 267.

[11] *Ex parte* Hobbs, 1 Woods, 542; Live Stock, etc. Asso. *v.* Crescent City, 1 Abb. U. S. 397.

[12] Slaughter House Cases, 16 Wall. 71.

[13] State *v.* McCann, 21 Ohio St. 198.

[14] Slaughter House Cases, 16 Wall. 75. The meaning of "privileges" in art. 4, sect. 2 (1) is such as each state gave to its own citizens; while its

to the rights of one citizen as against another,[1] nor does it add to the privileges or immunities existing at the time of its adoption;[2] it is merely a guaranty that they shall not be impaired by the states or by the United States.[3] It not merely requires equality of privileges and immunities, but demands that they shall be absolutely unabridged and unimpaired.[4] States may pass laws to regulate the privileges and immunities of its own citizens, provided they do not abridge the privileges and immunities of citizens of the United States,[5] so a state may pass laws for the protection of the lives, health, and property of its citizens.[6] Congress cannot protect a citizen in the right to the use of a public conveyance for local travel.[7]

The right of intermarriage between the races is not a privilege or immunity protected by this amendment, the marriage laws being under control of the states;[8] so states may

meaning in this section embraces much more and applies to all citizens of the United States (Live Stock, etc. Asso. *v.* Crescent City, 1 Abb. U. S. 398; United States *v.* Anthony, 11 Blatchf. 204), the meaning to be determined by the court in each particular case. *Ex parte* Hobbs, 1 Woods, 542; Live Stock, etc. Asso. *v.* Crescent City, 1 Abb. U. S. 397. See *ante*, art. 4, sect. 2.

[1] United States *v.* Cruikshank, 92 U. S. 543; 1 Woods, 308; Ward *v.* Flood, 48 Cal. 36.

[2] Miner *v.* Happersett, 21 Wall. 162; Ward *v.* Flood, 48 Cal. 36; Frasher *v.* State, 3 Tex. Ct. App. 267.

[3] United States *v.* Cruikshank, 92 U. S. 543; 1 Woods, 308; Van Valkenburgh *v.* Brown, 43 Cal. 43. But see United States *v.* Hall, 13 Int. Rev. Rec. 181; 3 Ch. L. N. 260.

[4] Live Stock, etc. Association *v.* Crescent City, 1 Abb. U. S. 398.

[5] Slaughter House Cases, 16 Wall. 36.

[6] *Ib.*; Thorpe *v.* Rutland, etc. R. R. Co., 27 Vt. 149; New York *v.* Miln, 11 Peters, 102; Prigg *v.* Comm., 16 Peters, 539; Comm. *v.* Kimball, 24 Pick. 359; Frasher *v.* State, 3 Tex. Ct. App. 273. This amendment was not intended to interfere with state laws for the regulation of pursuits, professions, or the use of property. Munn *v.* People, 69 Ill. 80.

[7] Cully *v.* Balt. & O. R. R., 1 Hughes, 536.

[8] *Ex parte* Hobbs, 1 Woods, 539; Lonas *v.* State, 3 Heisk. 287; State *v.* Gibson, 36 Ind. 389; Conner *v.* Elliott, 18 How. 591; Frasher *v.* State, 3 Tex. Ct. App. 263. But see Burns *v.* State, 48 Ala. 195.

provide against miscegenation, and make it a felony.[1] Nor is the right of trial by jury,[2] nor the right to practise law[3] or medicine,[4] nor the right to sell intoxicating liquors,[5] nor the right of fishery.[6]

The possession of all political rights is not essential to citizenship.[7] So a state may regulate the conditions for the tenure of office,[8] or determine the class of inhabitants who may vote.[9] The elective franchise is not a natural right, nor an immunity.[10] By this amendment, all persons born in the United States are citizens thereof and capable of becoming voters, but the provision is not self-executing.[11] It abrogates the provision in a statute discriminating in votes for corporation commissioners on account of race or color.[12] By this amendment, Congress had the right to pass the Civil Rights Bill,[13] which is constitutional.[14] Congress can only legislate in the protection of the rights of citizens of the United States, as such.[15] This amendment authorizes an act pro-

[1] Frasher *v.* State. 3 Tex. Ct. App. 263; State *v.* Gibson, 36 Ind. 389.

[2] Walker *v.* Sauvinet, 92 U. S. 90.

[3] Bradwell *v.* State, 16 Wall. 130; United States *v.* Anthony, 11 Blatchf. 204.

[4] *Ex parte* Spinney, 10 Nev. 323.

[5] Bartemeyer *v.* Iowa, 18 Wall. 129.

[6] McCready *v.* Virginia, 94 U. S. 391.

[7] People *v.* De La Guerra, 40 Cal. 311.

[8] Kennard *v.* Louisiana, 92 U. S. 480; Spencer *v.* Board, 1 McArth. 169.

[9] Van Valkenburgh *v.* Brown, 43 Cal. 43; United States *v.* Anthony, 11 Blatchf. 200; United States *v.* Crosby, 1 Hughes, 448; Miner *v.* Happersett, 21 Wall. 162; United States *v.* Cruikshank, 92 U. S. 543. But see Dillard *v.* Webb, 55 Ala. 468.

[10] Miner *v.* Happersett, 21 Wall. 162; United States *v.* Cruikshank, 92 U. S. 542; 1 Woods, 308; United States *v.* Anthony, 11 Blatchf. 200; Spencer *v.* Board, 1 McArth. 169; Van Valkenburgh *v.* Brown, 43 Cal. 43.

[11] Spencer *v.* Board, 1 McArth. 169.

[12] Dillard *v.* Webb, 55 Ala. 468.

[13] Smith *v.* Moody, 26 Ind. 307.

[14] *In re* Turner, 1 Abb. U. S. 88; Chase, 157.

[15] Cully *v.* Balt. & O. R. R. Co., 1 Hughes, 536; United States *v.* Cruikshank, 92 U. S. 560; 1 Woods, 308.

viding for the equal enjoyment of accommodations, advantages, facilities, and privileges of inns, conveyances, theatres, etc.[1] It was not intended to transfer the protection of all civil rights to the federal government, nor to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the several states.[2]

The protection of life and personal liberty rests in the state alone.[3] The federal government cannot punish an individual for conspiring to deprive a person of life, liberty, or property without due process of law.[4] An arrest made by an officer of the state militia, in pursuance of authority granted in time of insurrection, is not a deprival of liberty without due process of law.[5] A law allowing overseers to commit a vagrant on an *ex parte* hearing deprives of liberty without due process of law.[6] A state law regulating a pursuit or profession, or regulating the use of property, does not abridge the liberty of the citizen.[7] A statute regulating the use and even the price of property does not, in all cases, deprive of property without due process of law;[8] nor does a law which prohibits common carriers from discriminating against passengers on account of race or color.[9] Private property devoted to public use ceases to be private property to the extent of that use.[10] Due process of law means such an exertion of the power of government as the settled maxims of

[1] United States *v.* Newcomer, 22 Int. Rev. Rec. 115; 2 Am. L. T. Rep. U. S. 198.

[2] Slaughter House Cases, 16 Wall. 36; Frasher *v.* State, 3 Tex. Ct. App. 267.

[3] United States *v.* Cruikshank, 92 U. S. 542; 1 Woods, 308.

[4] United States *v.* Cruikshank, 92 U. S. 542; 1 Woods, 308.

[5] *In re* Burgen, 2 Hughes, 513.

[6] Portland *v.* Bangor, 65 Me. 120.

[7] Munn *v.* Illinois, 94 U. S. 113; 69 Ill. 80; *Ex parte* Spinney, 10 Nev. 323; Railroad Co. *v.* Richmond, 96 U. S. 521.

[8] Munn *v.* Illinois, 94 U. S. 113; 69 Ill. 80.

[9] De Cuir *v.* Benson, 27 La. An. 1.

[10] Munn *v.* Illinois, 94 U. S. 113; 69 Ill. 80.

law permit and sanction [1] in the regular course of administration, according to the prescribed forms,[2] according to the law of the land.[3] It means more than a special act authorizing the deprivation.[4] Where the statute makes ample provision for judicial inquiry, it is due process of law.[5] A party is not deprived of property without due process of law, although the case was tried without a jury.[6] The requirement is met if the trial is had according to the settled course of judicial proceedings.[7] So, the fact that the judgment of the commissioner is final does not deprive such person of due process of law ; [8] and the entry of judgment on a forfeited recognizance does not take property without due process of law.[9] The amendment does not apply to revenue collection.[10]

Assessment of taxes is necessarily summary, and need not be by judicial procedure.[11] So, a levy by a collector, in pursuance of a state law, is due process of law.[12] A statute regulating proceedings in contestations between claimants for a judicial office is not a violation of this section.[13]

Equal protection implies not only equal accessibility to courts for the prevention or redress of wrongs and the enforcement of rights, but equal exemption with others of the same class from all charges and burdens of every kind.[14] This amendment does not create any new rights, but oper-

[1] *Ex parte* Ah Fook, 49 Cal. 402.
[2] Rowan *v.* State, 30 Wis. 129.
[3] Walker *v.* Savinet, 92 U. S. 93 ; Kennard *v.* Louisiana, 92 U. S. 483.
[4] Clark *v.* Mitchell, 64 Mo. 564.
[5] Pearson *v.* Yewdall, 95 U. S. 296.
[6] Walker *v.* Savinet, 92 U. S. 90.
[7] Murray *v.* Hoboken etc. Co., 18 How. 280; Walker *v.* Savinet, 92 U. S. 93.
[8] *Ex parte* Ah Fook, 49 Cal. 402.
[9] People *v.* Quigg, 59 N. Y. 83.
[10] Davidson *v.* New Orleans, 96 U. S. Rep. p. 97.
[11] McMillen *v.* Anderson, 95 U. S. Rep. p. 37.
[12] *Ib.*
[13] Kennard *v.* Louisiana, 92 U. S. 480.
[14] *Ex parte* Ah Fong, 3 Sawy. 144.

ates on rights as it found them established.[1] It applies to all persons, whether natives or foreigners, while within the jurisdiction of the United States,[2] including persons of color,[3] and operates as a guaranty.[4] It means that persons made citizens by this amendment should be protected in the same manner, and to the same extent, that white citizens are protected.[5] A statute excluding colored children from the benefits of the school system denies them the equal protection of the laws;[6] but a statute providing for the education of colored children in separate schools is valid.[7] A law imposing a tax on minors, which discriminates in its operation as to race, is in conflict.[8] A state may legislate as to the rules of evidence,[9] and may exclude Chinese from the right to testify where a white person is a party.[10] The Civil Rights Bill had the effect of excluding the testimony of Chinese, for or against negroes, equally with whites.[11] This clause does not prevent the states from imposing a more severe punishment for adultery or fornication where the parties are of different races.[12]

A statute authorizing the recovery of double the value of property destroyed by a railroad train does not deprive of the equal protection of the laws;[13] nor does a statute regulating slaughter houses;[14] nor a statute regulating the charges

[1] Ward *v.* Flood, 48 Cal. 36.
[2] *Ex parte* Ah Fong, 3 Sawy. 144.
[3] Slaughter House Cases, 16 Wall. 36.
[4] United States *v.* Cruikshank, 92 Wall. 543; 1 Woods, 308.
[5] Slaughter House Cases, 16 Wall. 36.
[6] Ward *v.* Flood, 48 Cal. 36; but see Marshall *v.* Donovan, 10 Bush, 681.
[7] *Ib.*; Cory *v.* Carter, 48 Ind. 327; State *v.* McCann, 21 Ohio St. 198.
[8] United States *v.* Jackson, 3 Sawy. 61.
[9] People *v.* Brady, 40 Cal. 198; Duffy *v.* Hobson, 40 Cal. 240.
[10] *Ib.*, overruling People *v.* Washington, 36 Cal. 658.
[11] People *v.* Washington, 36 Cal. 658.
[12] Ford *v.* State, 53 Ala. 150; Ellis *v.* State, 42 Ala. 525.
[13] Tredway *v.* S. C. & St. P. R. Co., 43 Iowa, 527.
[14] Slaughter House Cases, 16 Wall. 36.

for storage in warehouses.[1] A state may legislate to prevent lewd and debauched women from landing as passengers,[2] or to prohibit females from being in places where liquor is sold.[3]

This provision simply prevents states from doing that which will deprive of property, not from regulating the use of property.[4]

Claims against the United States.

§ 208. Claims against the United States are examined either by officers in the departments of the Government, by the Court of Claims, the Commissioners of Claims, by committees of Congress, or by mixed commissioners, under treaties.

Claims may be presented in either House of Congress, by petition or by bills introduced by members. These are generally referred to appropriate committees, and by these examined, and then a report is made to the House in which the claim was presented, and if in favor of the claim with a bill or joint resolution for an appropriation to make payment, which is considered and passed, or rejected, as other private bills. Sometimes the bill refers the examination of the claim to the Court of Claims or to the Commissioners of Claims.

The Court of Claims renders judgments subject to an appeal to the Supreme Court of the United States, in which final judgment is entered, and these judgments are regarded as conclusive, and paid without examination by appropriations made by Congress.

The officers of the several departments of the Government examine the ordinary claims for salaries and other expenses of the Government, when they are reported to the proper

[1] Munn *v.* Illinois, 94 U. S. 113; 69 Ill. 80.
[2] *Ex parte* Ah Fook, 49 Cal. 402.
[3] *Ex parte* Nellie Smith, 38 Cal. 709.
[4] Munn *v.* Illinois, 94 U. S. 134.

officers of the Treasury Department and paid out of appropriations made from time to time by Congress.

An examination of the statutes will show the jurisdiction exercised by the officers of the departments, the Court of Claims, and the Commissioners of Claims, in the examination of claims, and the mode of procedure authorized by law.

Mixed commissions, under treaties, exercise such jurisdiction and in such mode as the treaties provide, aided by such legislation of Congress as may be necessary, and their awards are paid by appropriations made by Congress.[1]

International Tribunals, or Mixed Commissions under Treaty Stipulations for the Settlement of Claims.

§ 209. Since the organization of the Government of the United States, there have been many international tribunals or mixed commissions under treaties for the adjustment of claims between this and foreign powers.

The adjustment of such claims is usually committed to a tribunal composed of three members, — an arbitrator to represent each of the contracting parties, and an umpire, selected in accordance with the treaty stipulations. The commissioners are assisted by counsel and agents appointed by the respective governments. Usually, these commissions are constituted to examine and adjudicate the claims of the citizens of the respective countries, parties to the convention; but occasionally, as in the case of a commission[2] now in session in Washington, they have been of a unilateral character.

These tribunals are organized somewhat in the manner of modern judicial courts, being clothed with broad jurisdiction and having officers of the character to properly administer

[1] The Law of Claims against Governments. Government Printing Office, Washington, D. C., 1875.

[2] The United States and Spanish Commission under Agreement, Feb. 12, 1871.

the business. They have, usually, cognizance of all claims on the part of corporations, companies, or private individuals, citizens of the respective countries, arising from injuries to their persons or property by authorities of the other. Before proceeding to business, the commissioners are, according to the usual formula, required to make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and *according to public law, justice, and equity*, without fear, favor, or affection to their own country, upon all such claims above specified as shall be laid before them.

The theory — which may be assumed from the language of all the treaties which have been entered into in late years, at least — is that the commissioners (or judges) provided for are to be persons learned in the law, practised in diplomacy, familiar with justice and equity, and conversant with principles of public and international law. This has not, unfortunately, but in exceptional instances, been the case ; and the immediate result is, that the reports and decisions of many of these commissions will be examined in vain and without discovering the existence of any uniform or consistent system or rule, by virtue of which claims have been adjudicated, or principles of international law have been applied or vindicated. The functions of officers of commissions or courts so organized, are of an elevated and dignified character ; and should be exercised not only with diplomatic courtesy and zeal, but also in judicial gravity and fairness. It is usually the province of the commissioners to take up controversies where diplomacy has left them.

The function, office, and general jurisdiction of international commissions have been well pointed out by the Supreme Court of the United States.[1]

It would be creditable to such governments as may here-

[1] Comegys *v.* Vasse, 1 Peters, 212 ; Judson *v.* Corcoran, 17 Howard, 612 ; Phelps *v.* McDonald, 99 U. S. 306.

after enter into treaty stipulations with a view of organizing international tribunals or mixed commissions, if the executive department of the respective states would see to it that none but persons qualified by character, experience, and the learning appropriate to the positions and offices to which they are called, are appointed to represent them. With a commission thus organized, it would not be in vain to expect decisions and adjudications of vexed but practical and important living questions that would be a credit to international jurisprudence, at the same time that it would furnish a body of principles and precedents for future guidance. A recent writer advocates the creation of an International Court of Claims at the capitals of the several great powers as the best form of tribunal to consider and dispose of all claims of a character which have heretofore been submitted to international commissions. His views of the utility of such a court are presented with vigor and intelligence.[1]

The following proposition in relation to the conclusiveness of a certificate of naturalization has been submitted by a contemporary American writer, as the existing law. "The possession of a certificate of naturalization is not positive proof of the holder being a citizen. It is *prima facie* evidence, but not absolute evidence. It may have been obtained by fraud, and fraud vitiates everything. The Government, or the parties which dispute the claim to citizenship, must produce the proof of fraud, however, and until such proof is produced the claimant to the protection of the flag should be protected by all the power of the nation as if he were a native of the soil." In the absence of proof of a change, the original or primitive citizenship will be presumed to continue.[2]

[1] Washington Law Reporter, Vol. VIII. No. 49, p. 769.

[2] Hauenstein *v.* Lynham, 100 U. S. p. 483.

PART VI.

PROVISIONS IN THE CONSTITUTIONS OF THE SEVERAL STATES OF THE UNION IN RESPECT OF CITIZENSHIP.

[The reader will observe that the references, where the name of the reporter is not mentioned, are to the *volume* of the State Reports, and to the *page* in the order in which they occur.]

Alabama.

§ 210. That all persons resident in this state, born in the United States, or naturalized, or who shall have legally declared their intention to become citizens of the United States, are hereby declared citizens of the state of Alabama, possessing equal civil and political rights. — Art. 1, Sect. 2, Constitution of 1875.[1]

Arkansas.

§ 211. Every male citizen of the United States, or male person who has declared his intention of becoming a citizen[2]

[1] A person who removed to the territory of Louisiana after the treaty of Paris, in 1803, and before its admission into the Union as a state, and was an inhabitant thereof from the time of his removal until after the adoption of the state constitution and its admission into the Union, does not thereby become a citizen of the United States. State *v.* Primrose, Smith's Condensed Reports, Alabama, Vol. VII. p. 260.

Aliens entitled to same protection of the law as citizens. 52 Ala. p. 115.

To bring a case within the rule as to alien enemies, the two parties to the contract must, at the time, be under the dominion of different and opposing flags. 60 Ala. p. 568.

[2] Citizen means inhabitant, 24, p. 155.

Son made citizen by naturalization of father; when, 10, p. 621; cannot be

of the same, of the age of twenty-one years, who has resided in the state twelve months, and in the county six months, and in the voting precinct or ward one month next preceding any election where he may propose to vote, shall be entitled to vote at all elections by the people. — Art. 3, Sect. 1, Constitution of 1874.

California.

§ 212. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to abridge or restrain the liberty of speech or of the press. In all criminal prosecutions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact. Indictments found, or information laid, for publications in newspapers shall be tried in the county where such newspapers have their publication office, or in the county where the party alleged to be libelled resided at the time of the

deprived of rights and privileges, how lost, 24, p. 161; not lost because U. S. courts have no original jurisdiction, when, 2 Dillon, 229.

Persons of color are not, 6, p. 509; rights of, not to be affected by acts of comity between states, when, 23, p. 523.

In September, 1867, the U. S. forces had power to arrest citizens, 25, p. 315; controversies between aliens, and jurisdiction of courts, 29, p. 637; who aided rebellion were traitors, 25, p. 574.

Free negroes are not, 6, p. 509; of county, toll-bridges free to, 20, p. 625; defined, homestead, 24, p. 155; within Confederate lines is an enemy, 24, p. 337.

Of state, foreman of grand jury must be, 10, p. 78.

Alien suing jointly with, 2 Peters, 556; of parties as affecting jurisdiction of U. S. courts, Woolworth, p. 175; Hempstead, pp. 472, 534.

Becoming an adopted citizen of a foreign government does not work a forfeiture of any rights vested in one by law, while a citizen of the United States, though he afterward leaves this country, and takes an oath of allegiance to foreign government with intent and effect to expatriate himself. 16, 414, 436.

alleged publication, unless the place of trial shall be changed for good cause. — Constitution of 1879, Art. 1, Sect. 9.

No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature ; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens. — Constitution of 1879, Art. 1, Sect. 21.

Every native male citizen of the United States, every male person who shall have acquired the rights of citizenship under or by virtue of the treaty of Queretaro, and every male naturalized citizen thereof, who shall have become such ninety days prior to any election, of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county in which he claims his vote ninety days, and in the election precinct thirty days, shall be entitled to vote at all elections which are now, or hereafter may be, authorized by law ; *provided*, no native of China, no idiot, insane person, or person convicted of any infamous crime, and no person hereafter convicted of the embezzlement or misappropriation of public money, shall ever exercise the privileges of an elector in this state. — Constitution of 1879, Art. 2, Sect. 1.

The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say : —

. . . . .

Twenty-second. — Restoring to citizenship persons convicted of infamous crimes.

. . . . .

Foreigners of the white race or of African descent, eligible to become citizens of the United States under the naturalization laws thereof, while *bona fide* residents of this state, shall have the same rights in respect to the acquisition, possession, enjoyment, transmission, and inheritance of prop-

erty as native-born citizens. — Constitution of 1879, Art. 1, Sect. 17.

The presence of foreigners ineligible to become citizens of the United States is declared to be dangerous to the well-being of the state, and the Legislature shall discourage their immigration by all the means within its power. Asiatic coolieism is a form of human slavery, and is forever prohibited in this state, and all contracts for coolie labor shall be void. All companies or corporations, whether formed in this country or any foreign country, for the importation of such labor shall be subject to such penalties as the Legislature shall prescribe. The Legislature shall delegate all necessary power to the incorporated cities and towns of this state for the removal of Chinese without the limits of such cities and towns, or for their location within prescribed portions of those limits, and it shall also provide the necessary legislation to prohibit the introduction into this state of Chinese after the adoption of this constitution. This section shall be enforced by appropriate legislation. — Constitution of 1879, Art. 19, Sect. 4.[1]

[1] No white person born within the limits of the United States, and subject to their jurisdiction, or born without those limits, and subsequently naturalized under their laws, owes his status of citizenship to the recent amendments to the Federal Constitution. 43, p. 43.

The purpose of the Fourteenth Amendment to the Constitution of the United States was to confer the status of citizenship upon a numerous class of persons domiciled within the limits of the United States, who could not be brought within the operation of the naturalization laws, because native-born, and whose birth, though native, had at the same time left them without the status of citizenship. Such persons were not white persons, but in the main were of African blood, who had been held in slavery in this country, or, having themselves never been held in slavery, were the native-born descendants of slaves. *Id.*

Under the Fourteenth Amendment to the Federal Constitution the privileges and immunities of citizens of the United States are guaranteed and protected in every state beyond the operation of state laws. 43, p. 43.

The possession of all political rights is not essential to citizenship. 40, p. 311.

The elective franchise is not one of the immunities or privileges intended in

Colorado.

§ 213. Every male person over the age of twenty-one years, possessing the following qualifications, shall be entitled to vote at all elections: —

First. He shall be a citizen of the United States, or, not being a citizen of the United States, he shall have declared his intention, according to law, to become such citizen, not less than four months before he offers to vote.

Second. He shall have resided in the state six months immediately preceding the election at which he offers to vote, and in the county, city, town, ward, or precinct, such time as may be prescribed by law: Provided, That no person shall be denied the right to vote at any school-district election, nor to hold any school-district office, on account of sex. — Art. 7, Sect. 1, Constitution of 1876.

Connecticut.

§ 214. All persons who have been, or shall hereafter, previous to the ratification of this constitution, be admitted freemen, according to the existing laws of this state, shall be electors. —Art. 4, Sect. 2, Constitution of 1818.

Every white male citizen of the United States who shall have gained a settlement in this state, attained the age of twenty-one years, and resided in the town in which he may offer himself to be admitted to the privilege of an elector at least six months preceding, and have a freehold estate of the yearly value of seven dollars in this state; or, having been enrolled in the militia, shall have performed military duty

the first section of the Fourteenth Amendment to the Federal Constitution. 43, p. 43.

The mere power of the state to determine the class of inhabitants who may vote within her limits is not curtailed in the Fourteenth Amendment. *Id.*

The Fifteenth Amendment took away the authority of the state to discriminate against citizens of the United States on account of either race, color, or previous condition of servitude; but the power of exclusion upon all other grounds, including that of sex, remains intact. *Id.*

therein for the term of one year next preceding the time he shall offer himself for admission, or, being liable thereto, shall have been, by authority of law, excused therefrom, or shall have paid a state tax within the year next preceding the time he shall present himself for such admission, and shall sustain a good moral character, shall, on his taking such oath as may be prescribed by law, be an elector. — Art. 4, Sect. 2, Constitution, 1818.[1]

Delaware.

§ 215. All elections for governor, senators, representatives, sheriffs, and coroners shall be held on the second Tuesday[2] of November, and be by ballot; and in such elections every free white male citizen of the age of twenty-one years, or upwards, having resided in the state one year next before the election, and the last month thereof in the county where he offers to vote, and having within two years next before the election paid a county tax, which shall have been assessed at least six months before the election, shall enjoy the right of an elector; and every free white male citizen of the age of twenty-one years, and under the age of twenty-two years, having resided as aforesaid, shall be entitled to vote without payment of any tax: Provided, That no person in the military, naval, or marine service of the United States shall be considered as acquiring a residence in this state by being stationed in any garrison, barrack, or military or naval place or station within this state; and no idiot, or insane person, or pauper, or person convicted of a crime deemed by law a felony, shall enjoy the right of an elector; and that the legislature may impose the forfeiture of the right of suffrage as a punishment for crime. — Art. 4, Sect. 1, Constitution, 1831.[3]

[1] A free colored person born in this state is a citizen of the state and of the United States, within the meaning of the amendment to the constitution of the state, adopted in October, 1845. Opinion of the judges. 32, p. 565.

[2] Amended in 1855. Tuesday following first Monday.

[3] The disability and incompetency of free negroes to testify as witnesses in

Florida.

§ 216. Every male person of the age of twenty-one years and upwards, of whatever race, color, nationality, or previous condition, or who shall, at the time of offering to vote, be a citizen of the United States, or who shall have declared his intention to become such in conformity to the laws of the United States, and who shall have resided and had his habitation, domicile, home, and place of permanent abode in Florida for one year, and in the county for six months, next preceding the election at which he shall offer to vote, shall, in such county, be deemed a qualified elector at all elections under the constitution. Every elector shall, at the time of his registration, take and subscribe to the following oath: —

"I, ——— ———, do solemnly swear that I will support, protect, and defend the Constitution and Government of the United States, and the constitution and government of Florida, against all enemies, foreign or domestic; that I will bear true faith, loyalty, and allegiance to the same, any ordinances or resolution of any state convention or legislation to the contrary, notwithstanding: so help me God." — Art. 15, Sect. 1, Constitution, 1868.

No person under guardianship, *non compos mentis*, or insane shall be qualified to vote at any election; nor shall any person convicted of felony be qualified to vote at any election unless restored to civil rights. — Art. 15, Sect. 2, Constitution, 1868.

At any election at which a citizen or subject of any foreign country shall offer to vote, under the provisions of this constitution, he shall present to the persons lawfully authorized

any civil action in which a white person is a party is removed and abolished by the Thirteenth Amendment of the Constitution of the United States, and the act of Congress entitled "The Civil Rights Bill." And a negro slave, continuing voluntarily in the service of her former owner after the adoption of it, may maintain an action of *indebitatus assumpsit* against him to recover for such service without an express contract or promise on his part to pay for it. — Houston's Delaware Reports, Vol. IV. p. 16.

to conduct and supervise such election a duly sealed and certified copy of his declaration of intention; otherwise he shall not be allowed to vote; and any naturalized citizen, offering to vote, shall produce before said persons, lawfully authorized to conduct and supervise the election, his certificate of naturalization, or a duly sealed and certified copy thereof; otherwise he shall not be permitted to vote. — Art. 15, Sect. 3, Constitution, 1868.

The legislature may at any time impose such a tax on the Indians as they may deem proper; and such imposition of tax shall constitute the Indians citizens, and they shall thenceforward be entitled to all the privileges of other citizens, and thereafter be barred of special representation. — Art. 17, Sect. 8, Constitution, 1868.

Georgia.

§ 217. All citizens of the United States, resident in this state, are hereby declared citizens of this state; and it shall be the duty of the General Assembly to enact such laws as will protect them in the full enjoyment of the rights, privileges, and immunities due to such citizenship. — Art. 1, Sect. 1, par. 25, Constitution, 1877.[1]

[1] Free persons of color are not citizens, 4, p. 68.

All persons found within the limits of a government, whether their residence be deemed permanent or temporary, are to be deemed so far citizens or subjects thereof as that the right of jurisdiction, civil and criminal, will attach to such persons. 30, p. 440.

A certificate of naturalization in these words, namely: I, A. B., clerk, etc., hereby certify that at a superior court held at Savannah, etc., before X. Y., judge, etc., on a certain day, C. D., an alien, petitioned the court to be admitted a citizen, and, having in all things complied with the law in such cases, etc., the said C. D. was accordingly admitted a citizen of the United States, having first taken and subscribed in open court the oath of naturalization. Given under my hand and seal of said court, etc.: *Held*, To be insufficient to show that C. D. was naturalized. 18, 239.

ILLINOIS.

§ 218. Every person having resided in this state one year, in the county ninety days, and in the election district thirty days next preceding any election therein, who was an elector in this state on the first day of April, in the year of our Lord 1848, or obtained a certificate of naturalization, before any court of record in this state, prior to the first day of January, in the year of our Lord 1870, or who shall be a male citizen of the United States above the age of twenty-one years, shall be entitled to vote at such election. — Art. 7, Sect. 1, Constitution, 1870.[1]

INDIANA.

§ 219. In all elections not otherwise provided for by this constitution, every white male citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the state during the six months immediately preceding such election; and every white male of foreign birth, of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided

[1] Foreign corporations are not, 48, p. 172, and 55, p. 85.

The Criminal Court of St. Louis, being a court of record, having common-law jurisdiction of a certain class of cases, a seal, and a clerk, has jurisdiction, under the acts of Congress, to admit aliens to citizenship. 77, 644.

Where a person of foreign birth, who was a minor when he came to this country, testified that he had never been naturalized, and did not know that his father had been: *Held*, That this afforded *prima facie* evidence that such person is not entitled to vote, notwithstanding he had voted. 76, 34.

The courts authorized by the act of Congress to admit aliens to citizenship need not possess general common-law jurisdiction over all classes of actions, but must be courts of record for all purposes, possessing powers incident to such courts, with common-law jurisdiction over all subjects upon which they have authority to adjudicate, and must exercise their powers according to the course of the common law. 77, 644.

A record of naturalization, made by court of competent jurisdiction, cannot be impeached in a collateral proceeding, by parol evidence that the preliminary steps required by law had not in fact been taken. People *v.* McGowan, *Ib.*

Citizens may not be legal voters. 88 Illinois, p. 202.

in the state during the six months immediately preceding such election, and shall have declared his intention to become a citizen of the United States conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside. — Art. 2, Sect. 2, Constitution, 1851.

No soldier, seaman, or marine in the army or navy of the United States, or of their allies, shall be deemed to have acquired a residence in the state in consequence of having been stationed within the same, nor shall any such soldier, seaman, or marine have the right to vote. — Art. 2, Sect. 3, Constitution, 1851.

No person shall be deemed to have lost his residence in the state by reason of his absence, either on business of this state or of the United States. — Art. 2, Sect. 4, Constitution, 1851.

No negro or mulatto shall have the right of suffrage. — Art. 2, Sect. 5, Constitution, 1851.

The General Assembly shall have power to deprive of the right of suffrage, and to render ineligible, any person convicted of any infamous crime. — Art. 2, Sect. 8, Constitution, 1851.

The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens. — Art. 1, Sect. 23, Constitution, 1851.

[The Legislative Assembly of Indiana of 1873–1874 proposed several amendments to the constitution of 1851, but the Supreme Court of the state has held that they have never been adopted. These were as follows: —

1. Amend sect. 2, of art. 2, so as to read as follows: "Sect. 2. In all elections not otherwise provided for by this constitution, every male citizen of the United States of the age of twenty-one years and upward, who shall have resided in the state during six months, and in the township sixty

days, and in the ward or precinct thirty days, immediately preceding such election, and every male of foreign birth, of the age of twenty-one years and upward, who shall have resided in the United States one year, and shall have resided in this state during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside, if he shall have been duly registered according to law."

2. That the constitution of the state of Indiana be amended as follows: "By striking out the words, 'No negro or mulatto shall have the right of suffrage,' contained in Sect. 5 of the second article of the constitution."

Strike the word "white" from sects. 4 and 5 of art. 4.[1]]

Iowa.

§ 220. Every [white[2]] male citizen of the United States of the age of twenty-one years, who shall have been a resident of the state six months next preceding the election, and the county in which he claims his vote sixty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law. — Art. 2, Sect. 1, Constitution 1857.[3]

[1] That a freeman of color, born within the United States, is a citizen of the United States. — 26, p. 299.

The law presumes all persons who reside here to be citizens of the United States, until the contrary appears. — 6 Blackford, Indiana, 488.

The declaration of an alien of his intention to become a citizen of the United States is not objectionable because the name of the sovereign, allegiance to whom he particularly renounces, is not stated. 8 Blackford, Indiana, 395.

Citizen defined, 48 Ind. p. 327; 36 Ind. p. 267.

[2] Stricken out in 1868.

[3] Removal from the county, and residence under another government for a

Kansas.

§ 221. Every white male person, of the age of twenty-one years and upwards, belonging to either of the following classes, who shall have resided in Kansas six months next preceding any election, and in the township or ward in which he offers to vote at least thirty days next preceding such election, shall be deemed a qualified elector: First, citizens of the United States; Second, persons of foreign birth, who shall have declared their intention to become citizens conformably to the laws of the United States on the subject of naturalization. — Art. 5, Sect. 1, Constitution 1859.[1]

Kentucky.

§ 222. Every white male citizen of the age of twenty-one years, who has resided in the state two years, or in the county, town, or city in which he offers to vote one year, next preceding the election, shall be a voter; but such voter shall have been, for sixty days next preceding the election, a resident of

period of years, does not deprive one of his citizenship in this country. — 45, p. 99. (See also 30 Maine, 511; 26 Wend. 612; 3 Peters, 99.)

Involuntary military service in a foreign army by a citizen of this country, and the acceptance of a bounty therefor, does not have the effect to deprive him of his citizenship here. Id.

The citizenship of the child is determined by that of the father; and, though the latter reside in another country, the child will be a citizen of this, if the father has not forfeited or surrendered his allegiance thereto. — 45, 99.

Land of a non-resident alien descends to his children who are citizens of the United States to the exclusion of non-resident alien children. 53 Iowa, p. 97.

[1] The right of suffrage is not the test of citizenship. — 1, p. 313.

A white male person, of twenty-one years or upwards, being a citizen of the United States, or having declared his intention to become such, as required by law, who has resided in Kansas six months next preceding any election, and in the township or ward in which he offers to vote at least thirty days preceding such election, is a legal voter in Kansas (art. 5, sect. 1, State Constitution), notwithstanding he may be an officer or soldier in the army of the United States; but a person shall not be deemed to have gained a residence for the purpose of voting by reason of his presence in the state, while employed in the service of the United States. (Amendment to art. 5, sect. 3, Const. L. '64, 81.) (1868) 4 Kansas, 549.

the precinct in which he offers to vote, and he shall vote in said precinct, and not elsewhere. — Art. 2, Sect. 8, Constitution 1850.[1]

LOUISIANA.

§ 223. Every male citizen of the United States, and every male person of foreign birth who has been naturalized, or who may have legally declared his intention to become a citizen of the United States before he offers to vote, who is twenty-one years old or upwards, possessing the following qualifications, shall be an elector and shall be entitled to vote at any election by the people, except as hereinafter provided : —

First. He shall be an actual resident of the state at least one year preceding the election at which he offers to vote.

Second. He shall be an actual resident in the parish in which he offers to vote at least six months next preceding the election.

Third. He shall be an actual resident in the ward or precinct in which he offers to vote at least thirty days next preceding the election. — Art. 185, Constitution of 1879.[2]

[1] Corporations are not regarded as citizens except for the assertion of rights lawfully acquired, and suing in the federal courts. — 12 B. Monroe, 218.

The citizens of every municipality owe public duties to the corporate bodies of which they are members, many of which are to be performed without compensation. — 15 B. Monroe, 257.

Though a citizen may expatriate himself with the consent of his state, expressed or implied, no act of legislation can denationalize a citizen without his concurrence. — 10 Bush, 760.

A person may be a citizen of a state, although a non-resident. — 6 J. J. Marshall, 257.

No one is a citizen who is not entitled, upon the terms prescribed by the institutions of the state to all the rights and privileges conferred by those institutions on the highest class of society. Though females and infants do not personally possess those rights and privileges, they partake of the quality of those adult males who belong to the same class and condition in society, and will or will not be citizens, as those adult males are or are not so. — 1 Littell's Selected Cases, p. 333.

[2] A free person of color, in 1844, was a citizen of the United States.—25 Louisiana Annual Reports, p. 189.

A citizen, in the largest sense, is any native [born] or naturalized person,

Maine.

§ 224. Every male citizen of the United States, of the age of twenty-one years and upwards, excepting paupers, persons under guardianship, and Indians not taxed, having his residence established in this state for the term of three months next preceding any election, shall be an elector for governor, senators, and representatives, in the town or plantation where his residence is so established, and the elections shall be by written ballot. But persons in the military, naval, or marine service of the United States, or this state, shall not be considered as having obtained such established residence by being stationed in any garrison, barrack, or military place, in any town or plantation; nor shall the residence of any student at any seminary of learning entitle him to the right of suffrage in the town or plantation where such seminary is established. — Art. 2, Sect. 1, Constitution 1820.[1]

who is entitled to full protection in the exercise and enjoyment of the so-called private rights. *Ib. ib.*

As to residents of Louisiana before cession to United States, *Re* Harold, 2 Penn. Law Jour. 119.

As to status of inhabitants of Louisiana, subsequent to the treaty between France and the United States (30th April, 1803), see Paschal's Annotated Constitution of the United States, p. 223.

[1] The rights of citizenship are not lost by desertion from the U. S. service unless the deserter is also convicted by a court-martial. 59, p. 464.

By virtue of the act of Feb. 10, 1855, chap. 71, although a person was born out of the jurisdiction of the United States, he is a citizen thereof, if at the time of his birth his father was a citizen of the United States. 58, 353.

Free colored persons of African descent, *Held*, to be entitled to the rights of citizenship, and authorized under the constitution of this state to be electors for governor, senators, and representatives. Opinions of Justices, 44 Me. 506, 595.

The terms "citizen" and "citizenship" considered and defined. *Id.*

A residence of the father within the United States, and an adherence to its government from the commencement of the Revolutionary War until the definite treaty of peace in 1783, conferred all the rights of citizenship both upon himself and upon his minor child residing in his family. 30, p. 511.

By the common law, allegiance is not a matter of individual choice. It

MARYLAND.

§ 225. All elections shall be by ballot, and every white male citizen of the United States, of the age of twenty-one years or upward, who has been a resident of the state for one year, and of the legislative district of Baltimore City, or of the county in which he may offer to vote, for six months next preceding the election, shall be entitled to vote in the ward or election district in which he resides, at all elections hereafter to be held in this state; and, in case any county or city shall be so divided as to form portions of different electoral districts for the election of representatives in Congress, senators, delegates, or other officers, then to entitle a person to vote for such officer, he must have been a resident of that part of the town or city which shall form a part of the electoral district in which he offers to vote for six months next preceding the election; but a person who shall have acquired a residence in such county or city, entitling him to vote at any such election, shall be entitled to vote in the election-district

attaches at the time and on account of birth, under circumstances in which the family owes allegiance and is entitled to protection. *Id.*

Although the child whose citizenship is thus established may have removed immediately after coming of age to act for himself, into a British province, and adhered to its government, he is, on his return to the United States, entitled to the rights of citizenship. *Id.*

The treaty concluded at Washington, Aug. 6, 1842, confers the elective franchise on the subjects of the Queen of Great Britain, residing on the disputed territory in the northeastern portion of the state, at the time of the treaty, and not otherwise naturalized. Opinions of Justices, 68 Me. 589.

A debtor, temporarily within the state, is not excluded from the benefits of the statutes of this state exempting certain property from attachment. 46, p. 357.

When a person has forfeited his rights of citizenship under the Act of Congress of March 2, 1865, chap. 79, sect. 21, he loses his right of suffrage only when this right, under the constitution of the state to which he belongs, is restricted to citizens of the United States. 57, p. 148.

Under the said act, a citizen of this state can be deprived of the right of suffrage, or any right of citizenship, only after trial, conviction, and sentence of a court-martial. *Id.* See also 58, p. 353.

from which he removed until he shall have acquired a residence in the part of the county or city to which he has removed. — Art. 1, Sect. 1, Constitution 1867.[1]

[1] The proviso of the fourth section of this Act of Congress of 1802, chap. 28, is not prospective, but applies only to persons who were citizens at the time of its passage, and denies citizenship to the children of persons born abroad, unless their fathers, who may have been born abroad, had resided in this country. 9, p. 74.

Under this act children of naturalized persons are citizens, if under twenty-one years, and dwelling in the country at the time of the naturalization of the parents, and this applies to the children of a widow who has been naturalized. *Id.*

A plaintiff residing in Maryland, after institution of suit, sold out his farming utensils and furniture, went to Virginia, and for three or four years prior to the trial of his case was stationed there as an itinerant preacher by the conference of the religious society to which he belonged. This conference had power to assign him to any place they saw fit within their limits, which included part of Virginia and part of Maryland. He said he lived in Virginia, and had been living there three or four years, having occasionally visited his children whom he left in Maryland. There was no proof of any declaration, either at the time of leaving or since, of an intention to retain a residence in Maryland, or to resume it at any future time. *Held*, That this plaintiff was within the provisions of the ninth section of the Act of 1801, chap. 74, in regard to a removal out of the state after the institution of a suit; and may be required to give security for costs. 9, p. 194.

A temporary or transient residence by a citizen of another state in a county of this state, where his personal property is, at the time, situated is such a residence as amounts to a compliance with the provisions of the Act of 1856, chap. 154, requiring bills of sale or mortgages to be recorded and acknowledged in the county where the party executing the same resides. 13, p. 392.

The meaning of the word "citizen" in the Act of 1795, chap. 56, is synonymous with "inhabitant or permanent resident"; all such are alike entitled to the most enlarged remedial process and protection from summary proceedings, equally with natives or adopted citizens, enjoying the elective franchise and right of purchasing and holding real estate. This construction does not conflict with the provisions of the Act of 1715, chap. 40, but gives a cumulative remedy, adapted to the exigencies of trade and commerce, which would otherwise be much embarrassed by the delays of the law. *Id.*

The question of citizenship, in the purview of the Acts, is a mixed question of law and fact, to be found by the jury, under the direction of the court. 19, p. 82.

The Act of 1802, chap. 28, does not exclude females from the rights of citizenship by naturalization. 9, 74.

Massachusetts.

§ 226. Every male citizen of twenty-one years of age and upwards (except paupers and persons under guardianship), who shall have resided within the commonwealth one year, and within the town or district in which he may claim a right to vote six calendar months next preceding any election of governor, lieutenant-governor, senators, or representatives, and who shall have paid, by himself or his parent, master, or guardian, any state or county tax which shall, within two years next preceding such election, have been assessed upon him in any town or district of this commonwealth, and also every male citizen who shall be by law exempted from taxation, and who shall be in all other respects qualified as above mentioned, shall have a right to vote in such election of governor, lieutenant-governor, senators, and representatives, and no other person shall be entitled to vote in such election. — Art. 3, Amendments to the Constitution of 1780, ratified 1822.

No person of foreign birth shall be entitled to vote, or shall be eligible to office, unless he shall have resided within the jurisdiction of the United States for two years subsequent to his naturalization, and shall be otherwise qualified, according to the constitution and laws of this commonwealth: Provided, that this amendment shall not affect the rights which any person of foreign birth possessed at the time of the adoption thereof; and provided further, that it shall not affect the rights of any child of a citizen of the United States, born during the temporary absence of the parent therefrom. — Art. 26, Amendments to the Constitution of 1780, ratified 1863.[1]

[1] An alien is subject to taxation as a citizen but acquires no political rights thereby. 7 Mass. p. 523.

An alien becomes jointly seized of real estate conveyed to his wife in her right, subject to escheat at the suit of the government. 13 Pickering, p. 523.

An alien husband cannot be tenant by the curtesy. 20 Pickering, p. 121.

Nor can the wife have the right of dower. 9 Mass. p. 363.

An alien can take by purchase or devise, and hold any real estate so

Michigan.

§ 227. In all elections, every white male citizen, every white male inhabitant residing in the state on the twenty-fourth day of June, one thousand eight hundred and thirty-five; every white male inhabitant residing in this state on the first day of January, one thousand eight hundred and fifty, who has declared his intention to become a citizen of the United States, pursuant to the laws thereof six months preceding an election, or who has resided in this state two years and six months, and declared his intention as aforesaid; and every civilized male inhabitant of Indian descent, a native of the United States and not a member of any tribe, shall be an elector and entitled to vote; but no citizen or inhabitant shall be an elector, or entitled to vote at any election, unless he shall be above the age of twenty-one years, and has resided in this state three months, and in the township or ward in which he offers to vote ten days next preceding such election. — Art. 7, Sect. 1, Constitution 1850.

Minnesota.

§ 228. Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the United States one year, and in this state four months next preceding any election, shall be entitled to vote at such election, in the election district of which he shall at the time have been for ten days a resident, for

acquired until office found. 1 Mass. p. 257; 12 Mass. p. 148; 13 Pickering, p. 522.

Under the Revised Statutes, chap. 119, sect. 12, he may by possession sufficiently long acquire an indefeasible title even against the Commonwealth. 9 Metcalf, p. 154.

But on the death of an alien, intestate, his real estate vests in the Commonwealth immediately, without office found. 15 Pickering, p. 845; 16 Pickering, p. 177.

If an alien derives his title from the Commonwealth by deed of warranty, it will descend to his heirs though aliens, and is not liable to escheat. 3 Pickering, p. 224.

all officers that now, or hereafter may be, elective by the people: —

First. — Citizens of the United States.

Second. — Persons of foreign birth, who shall have declared their intention to become citizens, conformably to the laws of the United States upon the subject of naturalization.

Third. — Persons of mixed white and Indian blood, who have adopted the customs and habits of civilization.

Fourth. — Persons of Indian blood residing in this state, who have adopted the language, customs, and habits of civilization, after an examination before any district court of the state, in such a manner as may be provided by law, and shall have been pronounced by said court capable of enjoying the rights of citizenship within the state. — Art. 7, Sect. 1, Constitution of 1857, as amended in 1868.[1]

Mississippi.

§ 229. All persons resident in this state, citizens of the United States, are hereby declared to be citizens of the state of Mississippi. — Art. 1, Sect. 1, Constitution of 1868.[2]

Missouri.

§ 230. Every male citizen of the United States, and every male person of foreign birth, who may have declared his inten-

[1] Where the father becomes a naturalized citizen during the minority of his children resident with him in this country, the latter need not, upon coming of age, take out naturalization papers, to entitle them to the privileges of citizenship. 26 Minn. p. 183.

[2] That persons of African descent are not citizens. 8 George's Reports, p. 209, and *Id.* 235.

Proof that a free white person has been residing in the state and keeping a boarding-house for twelve months is sufficient to show that he is a citizen of the state, in the absence of all proof that he was a mere sojourner or transient person (9 George's Reports, p. 198); and if it appear that a party to a suit married in this state, kept a boarding-house, and hired slaves, it is sufficient to show, in the absence of contrary proof, that he is a free white person and a citizen.

tion to become a citizen of the United States according to law, not less than one year nor more than five years before he offers to vote, who is over the age of twenty-one years, possessing the following qualifications, shall be entitled to vote at all elections by the people: —

First. — He shall have resided in the state one year immediately preceding the election at which he shall offer to vote.

Second. — He shall have resided in the county, city, or town where he shall offer to vote at least sixty days immediately preceding the election. — Art. 8, Sect. 2, Constitution of 1875.

NEBRASKA.

§ 231. Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the state six months, and in the county, precinct, or ward for the term provided by law, shall be an elector: —

First. — Citizens of the United States.

Second. — Persons of foreign birth who shall have declared their intention to become citizens, conformably to the laws of the United States on the subject of naturalization, at least thirty days prior to an election. — Art. 7, Sect. 1, Constitution of 1875.

NEVADA.

§ 232. Every white male citizen of the United States (not laboring under the disabilities named in this constitution) of the age of twenty-one years and upwards, who shall have actually and not constructively resided in the state six months, and in the district or county thirty days next preceding any election, shall be entitled to vote for all officers who are now, or hereafter may be, elected by the people, and upon all questions submitted to the electors at such election; *provided*, That no person who has been or may be convicted of treason or felony in any state or territory of the United States, unless

restored to civil rights, and no person who, after arriving at the age of eighteen years, shall have voluntarily borne arms against the United States, or held civil or military office under the so-called Confederate States, or either of them, unless an amnesty be granted to such by the Federal Government, and no idiot or insane person, shall be entitled to the privilege of an elector. — Art. 2, Sect. 1, Constitution of 1864.

New Hampshire.

§ 233. The Senate shall be the first branch of the Legislature, and the senators shall be chosen in the following manner, viz.: Every male inhabitant of each town and parish with town privileges, and places unincorporated in this state, of twenty-one years of age and upwards, excepting paupers and persons excused from paying taxes at their own request, shall have a right, at the annual or other meeting of the inhabitants of said towns and parishes, to be duly warned and holden annually forever in the month of March, to vote in the town or parish wherein he dwells, for the senator in the district whereof he is a member. — Part II, Sect. 28, Constitution of 1792.[1]

New Jersey.

§ 234. Every [white[2]] male citizen of the United States, of the age of twenty-one years, who shall have been a resident of

[1] It is not necessary, in a petition for naturalization, under the act of April 14, 1802, for the applicant to allege or prove that he has resided within the state or territory where the application is made during the year next preceding his application. But he must show, to the satisfaction of the court, that during the whole period of residence required by law, it has *bona fide* been his intention to become a citizen of the United States. Cummings's Petition, 41, 270.

The states may prohibit their courts from naturalizing aliens. Stephens's case, 4 Gray, 559; Beavin's case, 33, 89.

An individual whose father appears to have been a resident in this country, and to have married and had children born here, is presumed to be a citizen, although he himself was born subsequently to his father's removal to a foreign country, there being nothing else to show his father to have been an alien. — 12, 362.

[2] The word "white" stricken out by amendment of 1875.

this state one year, and of the county in which he claims his vote five months, next before the election, shall be entitled to vote for all officers that now are, or hereafter may be, elective by the people. Provided, That no person in the military, naval, or marine service of the United States shall be considered a resident in this state, by being stationed in any garrison, barrack, or military or naval place or station within this state; and no pauper, idiot, insane person, or person convicted of a crime which now excludes him from being a witness, unless pardoned or restored by law to the right of suffrage, shall enjoy the right of an elector. — Art. 2, Sect. 1, Constitution of 1844.

New York.

§ 235. Every male citizen of the age of twenty-one years who shall have been a citizen ten days and an inhabitant of this state one year next preceding an election, and for the last four months a resident of the county, and for the last thirty days a resident of the election-district in which he may offer his vote, shall be entitled to vote at such election in the election-district of which he shall at the time be a resident, and not elsewhere, for all officers that now are, or hereafter may be, elective by the people, and upon all questions that may be submitted to the vote of the people: Provided, That in time of war no elector in the actual military service of the United States, in the army or navy thereof, shall be deprived of his vote by reason of his absence from such election district, and the legislature shall have the power to provide the manner in which and the time and place at which such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside. — Art. 2, Sect. 1, of Constitution of 1846, as amended in 1874.[1]

[1] Native-born citizens, and their rights and responsibilities as such: 17 Johnson, p. 511; 19 Johnson, p. 205; 6 Cowen, p. 404; 2 Wendell, p. 64; 3 Johnson's Chancery, p. 587; 1 Paige, p. 183; 31 Barbour, p. 486.

North Carolina.

§ 236. Every male person born in the United States, and every male person who has been naturalized, twenty-one years

Children of aliens — when citizens: 21 Wendell, p. 389; 26 Wendell, p. 613; 8 Paige, p. 433; 26 Barbour, p. 383; 31 Barbour, p. 486; 26 N. Y. Rep. p. 356; 22 Howard's Practice, p. 99.

The power to confer naturalization: 3 Parker's Criminal, p. 358; 18 Barbour, p. 444; 10 Howard's Practice, p. 246; 1 Abbott's Practice, p. 90.

Qualifications for naturalization, and application therefor: 16 Wendell, p. 617; 20 Wendell, p. 338; 7 Hill, p. 56; *Id.* p. 137; 3 Barbour's Chancery, p. 438; 7 Robertson, p. 635; 1 Daly, p. 531; *Id*, p. 534; 2 Daly, p. 525; 18 Barbour, p. 444.

Effect of naturalization — when retroactive: 1 Johnson's Cases, p. 399; 1 Cowen, p. 89; 5 Cowen, p. 713; 7 Wendell, p. 333; 13 Wendell, p. 524; 2 Hill, p. 67; 3 Barbour's Chancery, p. 438; 33 Barbour, p. 360; 4 Lansing, p. 440; 5 N. Y. p. 263; 39 N. Y. p. 333.

Evidence of citizenship or naturalization: 2 Hill, p. 320; 51 Barbour, p. 589; 53 Barbour, p. 472; 41 N. Y. p. 397; 3 Abbott's Practice, N. S. p. 453.

The right of expatriation: 2 Johnson's Cases, p. 407; 20 Johnson, p. 188.

In proceedings instituted for naturalizing an alien, his residence cannot be established by affidavit, but must be proved in court by the testimony of witnesses. Nor are affidavits admissible to establish the alien's good moral character, or his attachment to the principles of our government; though on these points his oath is admissible. But it seems that the oath of the alien should be corroborated by other evidence. Anon. 7 Hill, 137.

The powers conferred upon the courts to naturalize foreigners are judicial, and not ministerial or clerical, and therefore must be exercised by the court and not by the clerks, and require an examination into each case sufficient to satisfy the court of the following facts: 1. Five years' continuous residence of the applicant within the United States, and one year of like residence within the state or territory where the court to which the application is made is held. 2. That the applicant during the five years has conducted himself as a person of good moral character. 3. That the applicant is in principle attached to and well disposed toward the Constitution of the United States. The practice of the clerk of the court to receive and pass upon all applications for naturalization, and grant certificates without consulting the court, is forbidden. *Re* Clark, 18 Barb. 444.

An act of Congress (3 March, 1865, sect. 21), providing that, in addition to other penalties for desertion from the military or naval service of the United States, there shall also be a forfeiture of the rights of citizenship is constitutional. It is not an *ex post facto* law; neither is it a bill of attainder, for the reason that it contemplates a trial by a court-martial to enforce this penalty,

old or upward, who shall have resided in the state twelve months next preceding the election, and ninety days in the

together with the other penalties for desertion. 58 Barb. 152; 40 How. Pr. 97. See *s. c.* 61, 420.

Satisfactory proofs by a person applying to be naturalized, that he is of good moral character, that he has resided one year within the United States previous to the application, and that he is of the age of twenty-one years and upwards, that he was regularly enlisted in the United States navy, where he served as an enlisted man, and that he was honorably discharged from service, entitle him to naturalization, under the provisions of sect. 21 of the act of July 17, 1862. The provisions of the act embrace the army as well as the navy. *Re* Stewart, 7 Rob. (N. Y.) 635.

Where it is clearly inferable from a record of naturalization that the alien had not, at least three years previous to the date thereof, declared, on oath, his intention to become a citizen of the United States, and to renounce all allegiance, etc., as required by the act of 1802, but that the court has mistaken the registry of the arrival of the alien in the United States for such declaration of intention, *it seems* that the naturalization is invalid. But if regular on its face, it is conclusive. 3 Barb. Ch. 438.

It is provided by sect. 2165 of the Revised Statutes that an alien may be admitted to be a citizen of the United States by "a court of record of any of the states, having common-law jurisdiction and a seal and clerk." A city court, which is a court of record and has a seal and clerk, and has conferred upon it, by a statute of New York, all the power and jurisdiction of justices of the peace, and all jurisdiction and power, within the city, of the Marine Court in the city of New York, and whose judge is clothed with all the powers of a county judge and of a judge of the Supreme Court of the state at chambers, and which has civil jurisdiction in all actions for the recovery of money, when the amount recovered does not exceed $1,000, is a court having common-law jurisdiction, within the meaning of said sect. 2165. New York, 14 Blatch. 223.

An alien who arrived in this country since the act of March 3, 1813, applied to become a citizen, and it appeared that, during the five years next preceding his application, he had been in Upper Canada, though for a few minutes only, and without any intention of changing his residence: *Held*, that he was not entitled to be naturalized. *Ex parte* Paul, 7 Hill, 56. See *Ex parte* Hawley, 1 Daly, 531.

A child born in the United States, of alien parents, during its mother's temporary sojourn, is a native-born citizen. 26 Barb. 383.

A mariner of foreign birth, who, for five years previous to his application for citizenship, has been continuously and exclusively employed in American vessels, and for the last year of that term has shipped only in vessels belonging to the port of New York, is deemed a resident of the United States during the five years, and of New York for one year, unless it is shown that he has

county in which he offers to vote, shall be deemed an elector; but no person, who, upon conviction or confession in open

maintained his previous residence. *Re* Bye, 2 Daly, 525. See *Ex parte* Scott, 1 *Ib.* 534.

An alien *feme covert* may be naturalized without the concurrence of her husband. 16 Wend. 617.

Naturalization relates back, and confirms the title to land *purchased* during alienage. 1 Cow. 89.

But it does not retrospectively confirm a title claimed by *descent*. 39, 333.

State courts, in admitting aliens to citizenship under the naturalization laws, act as United States courts. The act of admission is in the nature of a judgment, of which the preliminary proofs, judge's *allocatur*, and oath of allegiance, duly filed, are the record. Entry in a book is not necessary; and the omission to enter, or defect in entering the admission in the minute-book, may be cured *nunc pro tunc*. *Re* Christern, 43 (Superior Ct.), 523.

Acts of Congress prescribing naturalization proceedings, reserved and explained at length, with special reference to whether voting on a certificate of naturalization, which was completely and duly made, but was defectively recorded, constitutes an unlawful and punishable use of the certificate. *Ib.*

March 18, 1807, Charles Anton Bollerman was born at Mainz in the Grand Duchy of Hesse, of parents who were residents and subjects thereof. In February, 1843, his parents were married at that place, in accordance with the provisions of the laws there existing, and there signed and executed a certificate declaring "that they had already engendered together the following children," naming them, "which children they hereby duly acknowledged and legitimated." By the laws of the said Grand Duchy, children so legitimated enjoy the same rights as if they were born in wedlock. There was no proof of any actual former marriage between the parties, nor was any evidence given to show whether the parents had lived together as husband and wife, or were reputed to be married, or that the children had been baptized, or had been regarded as legitimate by their parents or by strangers.

In an action of ejectment involving the title to real estate in this State, of which Charles Anton Bollerman, who was at the time of his death a citizen thereof, died seised, —

Held, that the question whether or not Bollerman was legitimate or illegitimate was to be determined by the laws of this State. That the term illegitimate, as used in the statute of descents of this State, means a child begotten and born out of wedlock. That the circumstances proved in this case were not only insufficient to authorize the inference of a marriage of Bollerman's parents prior to his birth, but disproved the existence of any such prior marriage. That Bollerman was illegitimate, and that the real estate descended to his relatives on the part of his mother.

Bollerman died May 18, 1866, leaving as his heirs-at-law two brothers and a sister, all non-resident aliens. In 1845 a convention was made between

court, shall be adjudged guilty of felony, or of any other crime infamous by the laws of this state, and hereafter committed,[1] shall be deemed an elector, unless such person shall be restored to the rights of citizenship in a manner prescribed by law. — Art. 6, Sect. 1, amended Constitution of 1876.

Ohio.

§ 237. Every white male citizen of the United States, of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county, township, or ward in which he resides such time as may be

the United States of America and the Grand Duchy of Hesse, "for the mutual abolition of the *droit d'aubaine* and taxes on emigrants."

By art. 1 thereof, every kind of *droit d'aubaine* was abolished, and art. 2 provided that where a citizen of either country would be entitled to inherit real estate, were he not disqualified by alienage, he should be allowed two years to sell the same and withdraw the proceeds thereof without molestation. In April, 1868, the legislature, by ch. 433, of 1868, released all the estate and interest of the State of New York in the real estate in question to Bollerman's heirs-at-law. In November, 1868, the alien heirs-at-law conveyed the land to defendant.

Held, that under the convention made in 1845, the real estate vested upon Bollerman's death, in his alien heirs-at-law, subject to be divested, upon their failure to sell the same within two years; that the passage of the act of 1868 removed this condition and vested the estate absolutely in them. *Bollerman* v. *Blake*, 31 Supreme Court (24 Hun), p. 188.

When an alien female intermarries with a citizen, by virtue of the marriage she becomes a citizen and capable of taking and holding lands in this state by purchase or descent. 80 New York (Court of Appeals), p. 171.

The words "resident alien" in the provision of the act of 1845, "to enable resident aliens to take and hold real estate" which enables those answering the description of heirs of a deceased alien resident to take, whether they are citizens or aliens, do not include or designate a naturalized citizen. *Id.*

So, also, the alien children of a deceased brother or sister of the intestate, who was an alien, are not within the provisions of the statute (1 Rev. Stats. 754, sect. 22) which saves a person "capable of inheriting" from being barred of the inheritance by reason of the alienage of any ancestor. *Id.*

The incapacity, therefore, of alien heirs of a naturalized citizen, who died intestate, to take lands of which he died seised, was not removed by the act of 1845. *Id.*

[1] That is, after Jan. 1, 1877. For judicial determination of citizenship, see The State *v.* Manuel, 4 Dev. & Bat. 20. Opinion by Gaston, J.

provided by law, shall have the qualifications of an elector, and be entitled to vote at all elections. — Art. 5, Sect. 1, Constitution of 1851.[1]

Oregon.

§ 238. In all elections not otherwise provided for by this constitution, every white male citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the state during the six months immediately preceding such election, and every white male of foreign birth, of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this state during the six months immediately preceding such election, and shall have declared his intention to become a citizen of the United States one year preceding such election, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote at all elections authorized by law. — Art. 2, Sect. 2, Constitution of 1857.

Pennsylvania.

239. Every male citizen twenty-one years of age, possessing the following qualifications, shall be entitled to vote at all elections : —

First. — He shall have been a citizen of the United States at least one month.

Second. — He shall have resided in the state one year (or if, having previously been a qualified elector or native-born citizen of the state, he shall have removed therefrom and returned, then six months) immediately preceding the election.

[1] The legislature has no power, directly or indirectly, to abridge the constitutional rights of citizens to vote, or unnecessarily to impede its exercise; and laws passed professedly to regulate its exercise, or prevent its abuse, must be reasonable, uniform, and impartial. The act of April 16, 1868, 65 O. L. 97, is unconstitutional, null, and void. 17 Ohio Rep. p. 665.

"Citizen" and "resident" defined. 11 Ohio Rep. p. 27.

Third. — He shall have resided in the election district where he shall offer to vote at least six months immediately preceding the election.

Fourth. — If twenty-two years of age or upwards, he shall have paid within two years a state or county tax, which shall have been assessed at least two months, and paid at least one month before the election. — Art. 8, Sect. 1, Constitution of 1873.[1]

Rhode Island.

§ 240. Every male citizen of the United States, of the age of twenty-one years, who has had his residence or home in this state for one year, and in the town or city in which he may claim a right to vote six months, next preceding the time of voting, and who is really and truly possessed in his own right of real estate in such town or city of the value of one hundred and thirty-four dollars, over and above all incumbrances, or which shall rent for seven dollars per annum, over and above any rent reserved on the interest of any incumbrances thereon, being an estate of fee-simple fee-tail for the life of any person, or an estate in reversion or remainder, which qualifies no other person to vote, the conveyance of such estate, if by deed, shall have been recorded at least ninety days, shall hereafter have a right to vote at the election of all civil officers, and on all questions, in all legal town or ward meetings,

[1] A rule to vacate a decree of naturalization will not be granted at the instance of a private citizen in the courts of Pennsylvania. The attorney-general must be a party. State *v.* Paper, 1 Brews. 263.

The seal of the court is conclusive as to the naturalization, unless the certificate has been obtained by falsehood or fraud. *Ib.;* also, 2 *Ib.* 130.

One who has been improperly naturalized may surrender his certificate and present a new petition. State *v.* Paper, 1 Brews. 263.

An alien cannot vouch for a person petitioning to be naturalized. State *v.* Paper, 1 Brews. 263.

But one citizen can vouch for a number of petitioners. *Ib.*

A certificate of naturalization establishes a *prima facie* right to vote; the election officers cannot go behind it. Commonwealth *v.* Lee, 1 Brews. 273; Commonwealth *v.* Sheriff, 1 Brews. 183.

so long as he continues so qualified. And if any person hereinbefore described shall own any such estate within this state out of the town or city in which he resides, he shall have a right to vote in the election of all general officers and members of the General Assembly, in the town or city in which he shall have had his residence and home for the term of six months next preceding the election, upon producing a certificate from the clerk of the town or city in which his estate lies, bearing date within ten days of the time of his voting, setting forth that such person has a sufficient estate therein to qualify him as a voter, and that the deed, if any, has been recorded ninety days. — Art. 2, Sect. 1, Constitution of 1842.

South Carolina.

§ 241. Every male citizen of the United States, of the age of twenty-one years and upwards, not laboring under the disabilities named in this constitution, without distinction of race, color, or former condition, who shall be a resident of this state at the time of the adoption of this constitution, or thereafter shall reside in this state one year, and in the county in which he offers to vote sixty days next preceding any election, shall be entitled to vote for all officers who now are, or hereafter may be, elected by the people, and upon all questions submitted to the electors at any elections; *provided*, That no person shall be allowed to vote or hold office who is now or hereafter may be disqualified therefor by the Constitution of the United States, until such qualification shall be removed by the Congress of the United States; *provided*, further, that no person, while kept in any almshouse or asylum, or of unsound mind, or confined in any public prison, shall be allowed to vote or hold office. — Art. 8, Sect. 2, Constitution of 1868.[1]

[1] Where a father has been a citizen of the United States, his son is entitled to the privileges of citizenship, though born without the limits of the United States. — 1 Nott & M. 292.

Otherwise where the *mother* is a *citizen*, and the *father* an *alien*. *Id.*

Under the acts of Congress, children born abroad, not only of citizens by

Tennessee.

§ 212. Every male person, of the age of twenty-one years, being a citizen of the United States, and a resident of this state for twelve months, and of the county[1] wherein he may offer his vote for six months next preceding the day of election, shall be entitled to vote for members of the General Assembly, and other civil officers for the county or district in which he resides; and there shall be no qualification attached to the right of suffrage except that each voter shall give to the judges of election, where he offers to vote, satisfactory evidence that he has paid the poll taxes assessed against him for such preceding period as the legislature shall prescribe, and at such time as may be prescribed by law, without which his vote cannot be received; and all male citizens of the state shall be subject to the payment of poll taxes, and the performance of military duty within such ages as may be prescribed by law. The General Assembly shall have power to enact laws requiring voters to vote in the election precincts in which they may reside, and laws to secure the freedom of elections and the purity of the ballot-box. — Art. 4, Sect. 1, Constitution of 1870.

birth, but also naturalized citizens, are citizens of the United States. 10 Rich. Eq. 38.

When citizenship presumed. 10 Rich. Eq. 38.

It was held, *many years ago*, that on a question of title the court may inquire into the regularity of an alien's proceeding in obtaining a certificate of citizenship. Vaux *v.* Nesbitt, 1 McCord, Ch. 370.

Note. — But this is at variance, and inconsistent with all the authorities (Federal and state), and this position has long been abandoned.

Proof that a foreigner resided in this state at least as early as 1778, and that he exercised the privileges and was reputed to be a citizen until his death in 1823, *held*, sufficient to raise the presumption that he had complied with the law in relation to naturalization which existed prior to 1790, and had become a citizen. Sasportas *v.* De La Motta, 10 Rich. 38.

[1] Under sec. 1, art. 4, *Const.* 1834, by "citizen of the county" is meant one who is a member of the body politic by naturalization or birth, and not simply an inhabitant. 5 Sneed, 482.

Texas.

§ 243. The following classes of persons shall not be allowed to vote in this state : —

First. — Persons under twenty-one years of age.

Second. — Idiots and lunatics.

Third. — All paupers supported by any county.

Fourth. — All persons convicted of any felony, subject to such exceptions as the legislature may make.

Fifth. — All soldiers, marines, and seamen, employed in the service of the army or navy of the United States. — Art. 6, Sect. 1, Constitution of 1876.

Every male person subject to none of the foregoing disqualifications, who shall have attained the age of twenty-one years, and who shall be a citizen of the United States, and who shall have resided in this state one year next preceding an election, and the last six months within the district or county in which he offers to vote, shall be deemed a qualified elector ; and every male person of foreign birth, subject to none of the foregoing disqualifications, who, at any time before an election, shall have declared his intention to become a citizen of the United States, in accordance with the federal naturalization laws, and shall have resided in this state one year next preceding such election, and the last six months in the county in which he offers to vote, shall be deemed a qualified elector, and all electors shall vote in the election precinct of their residence ; *provided*, That electors living in any unorganized county may vote at any election precinct in the county, to which such county is attached for judicial purposes. — Art. 6, Sect. 2, Constitution of 1876.

Vermont.

§ 244. Every man, of the full age of twenty-one years, having resided in this state for the space of one whole year, next before the election of representatives, who is of a quiet and peaceable behavior, and will take the following oath (or

affirmation), shall be entitled to all the privileges of a freeman of this state: —

You solemnly swear (or affirm) that whenever you give your vote or suffrage, touching any matter that concerns the state of Vermont, you will do it so as in your conscience you shall judge will most conduce to the best good of the same, as established by the constitution, without fear or favor of any man. — Chap. 2, Sect. 18, Constitution of 1786.

No person, who is not already a freeman of this state, shall be entitled to exercise the privilege of a freeman, unless he be a natural-born citizen of this or some one of the United States, or until he shall have been naturalized agreeably to the acts of Congress. — Art. 1 of the Amendment of the Constitution of 1793, adopted 1828.

Virginia.

§ 245. Every male citizen of the United States, twenty-one years old, who shall have been a resident of this state twelve months, and of the county, city, or town in which he shall offer to vote three months next preceding any election, shall be entitled to vote upon all questions submitted to the people at such election; Provided, that no officer, soldier, seaman, or marine of the United States army or navy shall be considered a resident of this state by reason of being stationed therein. And provided also, That the following persons shall be excluded from voting: —

First. — Idiots and lunatics.

Second. — Persons convicted of bribery in any election, embezzlement of public funds, treason, or felony.

Third. — No person who, while a citizen of this state, has, since the adoption of this constitution, fought a duel with a deadly weapon, either within or beyond the boundaries of this state, or knowingly conveyed a challenge, or aided or assisted in any manner in fighting a duel, shall be allowed to

vote or hold any office of honor, profit, or trust under this constitution. — Art. 3, Sect. 1, Constitution of 1870.

West Virginia.

§ 246. The male citizens of the state shall be entitled to vote at all elections held in the counties in which they respectively reside, but no person who is a minor, or of unsound mind, or a pauper, or who is under conviction of felony, or bribery in an election, or who has not been a resident of the state for one year, and of the county in which he offers to vote for sixty days next preceding such offer, shall be permitted to vote while such disability continues ; but no person in the military, naval, or marine service of the United States shall be deemed a resident of this state by reason of being stationed therein. — Art. 4, Sect. 1, Constitution of 1872.

Wisconsin.

§ 247. Every male person of the age of twenty-one years or upward, belonging to either of the following classes, who shall have resided in the state for one year next preceding any election, shall be deemed a qualified elector at such election : —

First. — White citizens of the United States.[1]

Second. — White persons of foreign birth who have declared their intention to become citizens conformably to the laws of the United States on the subject of naturalization.

Third. — Persons of Indian blood, who have once been declared by law of Congress to be citizens of the United States, any subsequent law of Congress to the contrary notwithstanding.

[1] By a decision of the Supreme Court, made during the year 1866 in the case of Gillespie *v.* Palmer, the right of suffrage was decided to have been extended to colored people by vote of the people at the general election held Nov. 6, 1849.

Fourth. — Civilized persons of Indian descent, not members of any tribe. Provided, that the legislature may, at any time, extend by law the right of suffrage to persons not herein enumerated; but no such law shall be in force until the same shall have been submitted to a vote of the people at a general election, and approved by a majority of all the votes cast at such election. — Art. 3, Sect. 1, Constitution of 1848.

No person under guardianship, *non compos mentis*, or insane, shall be qualified to vote at any election, nor shall any person convicted of treason or felony be qualified to vote at any election unless restored to civil rights. — Art. 3, Sect. 2, Constitution of 1848.

PART VII.

§ 248. UNDER the Revised Statutes, Sect. 2165, allowing naturalization [before "any court of any of the states having common-law jurisdiction and a seal and a clerk,"] it is not necessary that the court should have full and complete common-law jurisdiction. If a court may exercise any part of common-law jurisdiction, that is enough.[1]

To entitle an alien to naturalization he must show that he has behaved as a man of good moral character during all his residence in this country. Conviction of a crime since he came to this country to reside will bar his application, notwithstanding it occurred more than five years previous to the application.[2]

A Chinaman is not entitled to become naturalized because not a white person.[3]

§ 249. The rights which a person has as a citizen of a state are those which pertain to him as a member of society, and which would belong to him if his state were not one of the United States. Over such rights the state has the usual rights belonging to government.[4]

The rights which a person has as a citizen of the United

[1] 8 Metcalf (Mass.), p. 168; 2 Curtis, p. 98; 50 N. H. p. 245; 39 Cal. p. 98; 3 Peters, pp. 433–446. The city court of Yonkers (N. Y.) can naturalize. 2 Circuit (N. Y.), 1877; 14 Blatchford, p. 223.

[2] 9 Circuit (Ore.), 1878; 18 Albany Law Journal, p. 153; 6 Reporter, p. 294; 5 Sawyer, p. 195.

[3] 9 Circuit (Cal.); 6 Central Law Journal, p. 387; 5 Sawyer, p. 155.

[4] 4 Circuit (Va.) 1879; 3 Hughes, p. 9; 7 Reporter, p. 712.

States are such as he has by virtue of his State being a member of the Union, under the provisions of the Constitution. But the privilege of marrying does not belong to this class of rights. The regulation of the marriage relation is not within the jurisdiction of the federal government. *Id.*

That rights of citizenship, even since the Fourteenth Amendment, does not prevent a state from forbidding whites and blacks to intermarry, nor entitle a person convicted of violating such prohibition to the privilege of a federal *habeas corpus*. *Id.*

The right of a citizen to vote depends upon the laws of the state in which he resides, and is not granted to him by the Constitution of the United States, nor is such right guaranteed to him by that instrument. All that is guaranteed is that he shall not be deprived of suffrage by reason of his race, color, or previous condition of servitude.[1]

§ 250. The Civil Rights Act of Congress of 1866 (14 Statutes at Large, p. 27) was intended to protect against legal disabilities and legal impediments, not against private infringements of rights arising through prejudice or otherwise, when the laws are impartial and sufficient.[2]

The Fourteenth Amendment, in guaranteeing equal benefit of the laws to all, only prohibits state legislation contrary to equal rights ; it does not deal with individual action. Thus a state jury law which authorizes appointment of jury commissioners charged with the duty of selecting, impartially, good men to serve on juries, is not void because the commissioners may, and in fact do, select only white persons for jurors, and exclude negroes, although negroes arraigned for trial are thereby prejudiced.[3]

The Fourteenth Amendment does not prohibit the states

[1] 4 Circuit (S. C.), 1871; 1 Hughes, p. 448.
[2] 5 Circuit (La.), 1877; 5 Reporter, p. 201.
[3] *Ib.* 1878; 17 Albany Law Journal, p. 111.

from passing laws to regulate the charges of warehousemen and persons in other vocations, as they have formerly been accustomed to do.[1]

Under the principle that a government may regulate the conduct of its citizens towards each other, and, when necessary for the public good, the manner in which each shall use his own property, it has been customary in England from time immemorial, and in this country from its first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers, etc., and in so doing, to fix a maximum charge to be made for services rendered, accommodations furnished, and articles sold. *Id.*

It has never been supposed that statutes regulating the use, or even the price of the use, of private property, necessarily deprived an owner of his property without due process of law. Rights of property, and to a reasonable compensation for its use, created by the common law, cannot be taken away without due process of law; but the law itself, as a rule of conduct, may, unless constitutional limitations forbid, be changed at the will of the legislature. The limitation by legislative enactment of the rate of charge for services rendered in a public employment, or for the use of property in which the public has an interest, establishes no new principle in the law, but only gives a new effect to an old one. *Id.*

§ 251. Special legislation, which imposes a degrading and cruel punishment upon a class of persons entitled to the equal protection of the laws, is unconstitutional and void.[2]

An ordinance of San Francisco declared that every male person imprisoned in the county jail, etc., should have the hair of his head cut or clipped to the uniform length of one inch from the scalp, etc. The ordinance was enforced against

[1] Supreme Court, 1876, 94 U. S. (4 Otto), p. 113.

[2] 9 Circuit (Cal.), 1879; 20 Albany Law Journal, p. 250; 18 American Law Register, p. 676, N. S; 8 Reporter, p. 195; 13 Western Jurist, p. 409; 25 Internal Revenue Record, p. 312; 5 Sawyer, p. 552.

the plaintiff, a Chinaman, the loss of whose queue is regarded as a disgrace by the Chinese, and, according to their religious faith, is attended with suffering after death. Held, that the ordinance was unconstitutional and void. *Id.*

The ordinance being directed against the Chinese only, imposing upon them a degrading and cruel punishment, is also subject to the further objection that it is hostile and discriminating legislation against a class, forbidden by that clause of the Fourteenth Amendment to the Constitution, which declares that no state "shall deny to any person within its jurisdiction the equal protection of its laws." This inhibition upon the state applies to all the instrumentalities and agencies employed in the administration of its government; to its executive, legislative, and judicial departments, and to the subordinate legislative bodies of its counties and cities. *Id.*

The equality of protection thus assured to every one whilst within the United States implies not only that the courts of the country shall be open to him on the same terms as to all others for the security of his person or property, the prevention or redress of wrongs, and the enforcement of contracts, but that no charges or burdens shall be laid upon him which are not equally borne by others, and that in the administration of criminal justice he shall suffer for his offences no greater or different punishment. *Id.*

The legislation of Congress, carrying out the provisions of the Fourteenth Amendment in accordance with these views, reviewed and explained. — *Id.*

The Virginia statute prohibiting intermarriage between the white and the negro citizens of the commonwealth is not in conflict with the Federal Constitution.[1]

§ 252. There is a limitation upon the power of Congress to fine and imprison contumacious witnesses.[2]

[1] 3 Hughes, p. 9.

[2] Kilbourn *v.* Thompson, 103 U. S. Sup. Ct. (13 Otto) p. 168.

The right to be secure in one's house is not derived from the Constitution, having existed long before; and is not embraced in the phrase, "right, etc., granted or secured by the Constitution" employed in the Civil Rights Act of Congress of May 31, 1870.[1]

A colored woman boarded a steamer as a passenger, and took her position on the upper deck aft, which place was assigned to the exclusive use of white passengers. One of the officers of the boat directed her to go to the lower deck, which afforded substantially the same accommodations as the upper, but was designed expressly for colored people. She declined to go, and tendered the customary fare, which was refused. She was informed that unless she would go below she would be ejected from the boat at the next landing-place, so she voluntarily left the boat at such landing-place. Held, that she had no cause of action for such exclusion.[2]

The rights of colored persons to be received at and entertained in inns, and the liabilities and duties of innkeepers towards them, explained at length in a charge to the grand jury.[3]

§ 253. Receiving the preliminary application and oath of an alien to be naturalized is a ministerial, rather than a judicial act, and may be done before a clerk of the court as well as the court itself.[4]

An alien enemy cannot be permitted to make the declaration required by law preparatory to the naturalization of aliens.[5]

See also an exhaustive discussion of The Power of Congress to punish Contempts and Breaches of Privileges, by Charles P. James, of the Washington Bar. This pamphlet was written and published some time prior to the decision of the Supreme Court in Kilbourn *v.* Thompson.

[1] 16 Statutes at Large, p. 140; 4 Circuit (S. C.) 1871; 1 Hughes, p. 448.

[2] 5 Circuit (Ga.), 1879; 9 Central Law Journal, p. 206.

[3] 1 Hughes, p. 541.

[4] Butterworth's case, 1 Woodb. & M. 323.

[5] *Ex parte* Newman, 2 Gall. 11.

The statute of the state of California, prohibiting all *aliens* incapable of becoming electors of the state from fishing in the waters of the state is in violation of the Fourteenth Amendment of the Constitution of the United States, and of the fifth and sixth articles of the treaty with China, and is void.[1]

[1] *In re* Ah Chong *et al. v.* United States, Circuit Court, District of California, decided June 9, 1880; Pacific Coast Law Journal, June 12, 1880; also 2 Federal Reporter, p. 733.

APPENDIX.

The existing law of the United States in respect of citizenship has been digested by Desty, as follows: —

A.

Eligibility and Title to Office in the United States and in the Several States of the Union.

Title to office depends on the fact of election, and not upon acts or omissions of officers.[1] The person who denies the eligibility of a candidate must take the burden of proof.[2]

The Legislature cannot add qualifications to those prescribed by the Constitution.[3] A person who is not an elector because of some disqualification, which he has the power to remove at any time, is not eligible to be elected. The disqualification does not relate to the election, but to the holding of the office.[4] So a minor, or a person who lacks the qualifications of residence, may be elected, and may enter on the duties of his office in case the disabilities as to age or residence are removed before the term of office commences, and such term commences when he enters upon its duties.[5]

If the person elected has resided in the state for the time required, it is not essential that he shall have been a *citizen* during the *whole* of

[1] State *v.* Wright, 10 Heisk. 237; Hartt *v.* Harvey, 32 Barb. 55.

[2] Amer. Law of Elect. 162; Kentucky Election, 2 Bart. 329.

[3] Page *v.* Hardin, 8 B. Mon. 661. See State *v.* Covington, 29 Ohio St. 102.

[4] Paynter's Pract. at Elect. 55; 1 Douglas, 143; 2 *Id.* 450; Hammond *v.* Herrick, Clarke & H. 297; Case of Earl, *Id.* 314; Case of Mumford, *Id.* 316; State *v.* Murray, 28 Wis. 100; Cush. Law & Pr. of Legis. Assemb. sect. 76; Amer. Law of Elect. 192.

[5] State *v.* Murray, 28 Wis. 100; Cush. Law & Pr. of Legis Assemb. sect. 78.

that time. It is the *person*, the *individual*, the *man*, who is to possess the qualifications at the time he is elected,[1] and he may qualify himself *after election*.[2]

The statute providing for contesting elections should be liberally construed, to the end that the will of the people in the choice of public officers may not be defeated by any formal or technical objections,[3] the people being parties in interest.[4]

The fact that voters have notice of the ineligibility of the candidate at the time they cast their votes makes no difference.[5] No votes should be rejected simply on account of the ineligibility of the candidate voted for. It is a legal and proper mode of exercising the right of suffrage if the voter choose it. It is a vote *against* all the candidates voted for, eligible or ineligible. The difference between the two kinds of votes affects the candidates, not the voter.[6]

The certificate of election is *prima facie* evidence of right to the seat.[7] It is the best, but not the only evidence.[8] It is conclusive of the right of the office, although a prior incumbent contesting is authorized to hold.[9]

Where the credentials are in due form the party *must be sworn in* pending the investigation and until a decision on the merits.[10]

Citizenship by Birth.

Who are *citizens?*

First. — Persons who are born in or are naturalized in the United States.[11]

[1] Biddle *v.* Richard, Clarke & Hall (Cont. El. Cas. 1789–1834), 407.

[2] State *v.* Murray, 28 Wis. 96.

[3] Hadley *v.* Gutridge, 58 Ind. 309; State *v.* Murray, 28 Wis. 100.

[4] Cush. El. Cas. 264, 265.

[5] Case of Abbott of N. C., Senate Rep. No. 58, 42d Cong. 2d Sess.

[6] Vote for Inelig. Cand., Cush. El. Cas. 497.

[7] State *v.* Governor, 1 Dutch. 331; People *v.* Miller, 16 Mich. 56; People *v.* Vail, 20 Wend. 12; Cush. El. Cas. 216; Am. Law of El. 159, 160; Com. *v.* Baxter, 35 Pa. St. 263; Kerr *v.* Trego, 47 *Id.* 296; Crowell *v.* Lambert, 10 Minn. 369; State *v.* Sherwood, 15 Minn. 221; State *v.* Churchill, *Id.* 455.

[8] Richard's Case, Clarke & H. 95; Clement's Case, 1 Bart. 266.

[9] Moulton *v.* Reid, 54 Ala. 320.

[10] Porter *v.* Robbins, Clarke & H. 877; Amer. Law of Elect. 148, 149.

[11] United States *v.* Rhodes, 1 Am. L. T. Rep. 22; Spencer *v.* Board, etc. 1 McArthur, 169.

Second. — The children of native or naturalized citizens.[1]

Third. — Persons born on an American vessel.[2]

Fourth. — Persons made such by treaty.[3]

Fifth. — Children born abroad, whose fathers were at the time of their birth citizens, and had at some time resided in the United States.[4]

Sixth. — Citizens made such by collective naturalization acts of Congress.[5]

As citizens made by emancipation.[6]

So, impliedly, Indians taxed are citizens.[7]

And all persons born in the district of country formerly the territory of Oregon are citizens as if born elsewhere in the United States.[8]

Citizenship by Naturalization.

Right of Expatriation. — The right of allegiance, though a fundamental right,[9] is not perpetual.[10] It may be renounced,[11] or it may be dissolved by mutual consent,[12] or it may be regulated or restrained.[13]

But all persons have a right to expatriate themselves and to dissolve their connection with their parent country.[14] Emigration with intent not to return, and assuming the obligations of a subject to a foreign government, is sufficient expatriation.[15] Actual emigration is

[1] Rev. St. U. S., sect. 1993, 1999.

[2] United States *v.* Gordon, 5 Blatchf. 18.

[3] Pueblo Indians of New Mexico, 1 Chic. L. N. 169; McKay *v.* Campbell, 2 Sawy. 118.

[4] Citizenship, 13 Op. Att.-Gen. 91.

[5] *Ib.* 397; Jones *v.* McMasters, 20 How. 8; McKinney *v.* Saviego, 18 How. 235.

[6] United States *v.* Rhodes, 1 Abb. U. S. 28; Matter of Turner, 1 Abb. U. S. 84.

[7] United States *v.* Elm, 23 Int. Rev. Rec. 419. See Rev. Stat. U. S. sect. 1992.

[8] Rev. Stat. U. S. sect. 1995.

[9] Stoughton *v.* Taylor, 2 Paine, 655.

[10] Vattel, Book I. chap. 19, sects. 220–228; Rev. Stat. U. S. sect. 1999.

[11] Expatriation, 14 Op. Att.-Gen. 295; Jansen *v.* Cath. Magdalena, Bee, 11; 3 Dall. 383.

[12] Inglis *v.* Sailor's Snug Harbour, 3 Pet. 101.

[13] 9 Op. Att.-Gen. 62; 8 *Ib.* 139.

[14] Rev. Stat. U. S. sect. 1999; Vattel, Book I. chap. 19, sects. 220–228.

[15] 9 Op. Att.-Gen. 62.

evidence, with other concurring acts.[1] Renunciation of citizenship and actual removal, and the acquisition of a foreign domicile, is sufficient.[2] Expatriation includes naturalization.[3]

Citizenship through Husband or Parent.

Women may be citizens.[4]

Naturalization by Marriage. — Any woman who is now, or may hereafter be, married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen.[5] She becomes *ipso facto* a naturalized citizen of the United States.[6]

The object of the act was to allow the citizenship of the wife to follow that of her husband without the necessity of any application for naturalization on her part.[7]

The term "who might lawfully be naturalized under the existing laws," only limits the application to free white women.[8]

An alien woman, who marries a citizen of the United States residing abroad — the marriage being solemnized abroad, and the parties continuing abroad — is a citizen of the United States within the meaning of the act of 1855, though she never resided in the United States.[9] Thus a woman born in the United States, but married to a citizen of France, and domiciled there, is not a citizen of the United States residing abroad.[10]

Children of citizens of the United States, heretofore or hereafter born out of the United States, are to be considered as citizens of the United States.[11] So, as to children of naturalized citizens,[12] and the questions of legitimacy cannot be inquired into.[13]

[1] Stoughton *v.* Taylor, 2 Paine, 655.
[2] Talbot *v.* Jansen, 3 Dall. 133; Bee, 11.
[3] 9 Op. Att.-Gen. 356.
[4] Miner *v.* Happersett, 21 Wall. 162.
[5] Rev. Stat. U. S. sect. 1994; Kelly *v.* Owen, 7 Wall. 496.
[6] Kelly *v.* Owen, 7 Wall. 496.
[7] *Ib.* [8] *Ib.*
[9] Citizenship, 14 Op. Att.-Gen. 402.
[10] *Ib.*, 13 Op. Att.-Gen. 128.
[11] Rev. Stat. U. S. sect. 1993; Amer. Law of Elect. p. 46; Sasportas *v.* De la Motta, 10 Rich. Eq. 38.
[12] Rev. Stat. U. S. sect. 2172; Campbell *v.* Gordon, 6 Cranch, 176; Sasportas *v.* De La Motta, 10 Rich. Eq. 38.
[13] Dale *v.* Irwin, 78 Ill. 170.

In determining whether a person is a legal voter, it is not proper to inquire whether he is legally married to the woman with whom he lives and keeps house.[1]

State Citizenship — Its Existence.

There is a state citizenship,[2] as distinguished from United States citizenship.[3]

The comity between states and citizens of the United States, so far as it concerns rights, privileges, and immunities not guaranteed by the Constitution of the United States, must yield to the law and policy of the state in which it is sought to be invoked.[4]

A person may be a citizen of the United States and not be a citizen of a particular state.[5] But a state court cannot make a citizen of the United States.[6]

Although a state by its law, passed since the adoption of the constitution, may put a foreigner or any other description of person upon a footing with its own citizens as to the rights and privileges enjoyed by them within its dominion and by its laws, it will not entitle him to sue in its courts nor grant any privileges and immunities of a citizen of another state.[7]

The inhabitants of the District of Columbia, by its separation from the states of Virginia and Maryland, ceased to be citizens of those states, and became citizens of such district.[8]

That there is a state citizenship, see Registry Act of California of 1865–1866, sect. 11.

[1] Draper *v.* Johnson, Clark & H. 702.

[2] Cush. El. Cas. 343; Constitution of United States, art. 4, sect. 2, (1). See Corfield *v.* Coryell, 4 Wash. C. C. 371; Conner *v.* Elliott, 18 How. 591.

[3] United States *v.* Cruikshank, 92 U. S. 542; Dred Scott *v.* Sandford, 19 How. 393.

[4] Donovan *v.* Pitcher, 53 Ala. 411.

[5] Cully *v.* Baltimore, etc., R. R. Co., 1 Hughes, 536; Prentiss *v.* Brennan, 2 Blatchf. 162; Slaughter House Cases, 16 Wall. 74; United States *v.* Cruikshank, 92 U. S. 543; 1 Woods, 308; Frasher *v.* State, 3 Tex. Ct. App. 267.

[6] Matthew *v.* Rae, 3 Cranch, C. C. 699; Dred Scott *v.* Sandford, 19 How. 393.

[7] Dred Scott *v.* Sandford, 19 How. 393.

[8] Reilly *v.* Lamar, 2 Cranch, 344. See Const. Cal. art. 1, sect. 8, par. 17.

State Citizenship depends on Domicile. — Two things must concur: First, residence; second, intent to make it a home.[1]

It depends largely on intention and the conduct of the party.[2]

One who emigrates to another state must be regarded as a citizen of such state.[3]

Citizen and person are synonymous terms.[4] Citizen is analagous to subject at common law.[5]

Domicile is the place where a person lives or has his home, — the place to which when absent he has the intention of returning.[6] A fixed residence in any place with an intention of staying there.[7]

Length of time, or even the shortest residence, with a design of permanent settlement, stamps the party with the national character.[8] Residence, however short, if taken *animo manendi*, establishes domicile.[9]

The presumption arising from actual residence is conclusive that the party is there *animo manendi*.[10] Residence is the source and foundation of domicile, and length of residence is evidence of intention.[11]

In general, the national character of a person is to be decided by that of his domicile.[12] Where a person is *bona fide* domiciled in a

[1] Story, Confl. of Laws, 37.

[2] Ewing *v.* Blight, 3 Wall. Jr. 134.

[3] Com. *v.* Towles, 5 Leigh, 743.

[4] People *v.* C. & A. R. R. Co., 6 Chic. L. N. 280; 6 Bissell, 107.

[5] United States *v.* Rhodes, 1 Abb. U. S. 39; North Carolina *v.* Manuel, 4 Dev. & B. 20; McKay *v.* Campbell, 2 Sawy. 129; The Ann Green, 1 Gall. 274.

[6] Story Confl. of Laws, 35.

[7] Vattel, Book I. chap. 19, sect. 218.

[8] The Ann Green, 1 Gall. 274; Walker *v.* Walker, 1 Mo. App. 404; The Venus, 8 Cranch, 253; White *v.* Brown, 1 Wall. Jr. 217; United States *v.* The Penelope, 2 Pet. Ad. 438; Burnham *v.* Rangeley, 1 Wood. & M. 7; Case *v.* Clarke, 5 Mason, 70.

[9] Johnson *v.* Falconer, 2 Paine, 602; Van Ness, 1; Case *v.* Clarke, 5 Mason, 70; *Ex parte* Wiggin, 1 Bank. Reg. 90; 1 Nat. Bank. Reg. Rep. 386.

[10] Rogers *v.* The Amado, 1 Newb. 400; Bailey's Case, Clarke & H. 411.

[11] Johnson *v.* Falconer, 2 Paine, 602; Van Ness, 1.

[12] The San Jose Indiano, 2 Gall. 268; Murray *v* The Charming Betsy, 2 Cranch, 64; Maley's Cases, 3 Cranch, 458; The Ann Green, 1 Gall. 274; Wildes *v.* Parker, 3 Sum. 593.

particular country, the character of the country irresistibly attaches to him whatever his trade or business.[1]

A party can have only one domicile.[2] And if a party have two residences he may elect which shall be his domicile.[3]

The place of residence must be taken to be the domicile of choice,[4] and it is not changed by absence for educational purposes.[5]

Domicile of origin is presumed retained until residence elsewhere has been shown.[6] It easily reverts.[7]

A change of domicile depends on intent.[8] A domicile of origin cannot be abandoned till another is acquired.[9]

The determination depends on all the facts and circumstances taken together.[10] Domicile can only be divested by an actual departure,[11] and not then if the removal is without intent to remain, unless suited.[12] By a *bona fide* change.[13]

A person altering his domicile to another state may be a citizen of that state though not having the right to vote.[14]

[1] Livingston *v.* Md. Ins. Co., 7 Cranch, 506.

[2] Abington *v.* North Bridgewater, 23 Pick. 170; Brent *v.* Armfield, 4 Cranch, C. C. 579.

[3] Burnham *v.* Rangeley, 1 Wood. & M. 7; Brent *v.* Armfield, 4 Cranch, C. C. 579.

[4] Butler *v.* Farnsworth, 4 Wash. C. C. 101; Rogers *v* The Amado, 1 Newb. 400.

[5] Granby *v.* Amherst, 7 Mass. 1. See Cush. El. Cas. 436, 510.

[6] Ennis *v.* Smith, 14 How. 401; Burnham *v.* Rangeley, 1 Wood. & M. 7; Prentiss *v.* Barton, 1 Brock. 373.

[7] Catlin *v.* Gladding, 4 Mason, 308; Johnson *v.* Twenty-one Bales, 2 Paine, 601; The Nereide, 9 Cranch, 389; Prentiss *v.* Barton, 1 Brock. 389; Clarke *v.* Territory of Washington, 1 Wash. Terr. 68. See The Frendschaft, 3 Wheat. 14; The Francis, 8 Cranch, 335.

[8] Harris *v.* Firth, 4 Cranch, C. C. 710; Hayes *v.* Hayes, 74 Ill. 312; Jennison *v.* Hapgood, 10 Pick. 77.

[9] Kellogg *v.* Super. of Winnebago, 42 Wis. 97.

[10] Huidmann's App., 85 Pa. St. 466; Kellogg *v.* Super. of Winnebago, 42 Wis. 97.

[11] Johnson *v.* Falconer, 2 Paine, 602; Van Ness, 1.

[12] Beardstown *v.* Virginia, 81 Ill. 541.

[13] Cooper *v.* Galbraith, 3 Wash. C. C. 546; Butler *v.* Farnsworth, 4 Wash. C. C. 101; Jones *v.* League, 18 How. 76; Case *v.* Clark, 5 Mason, 70; Evans *v.* Davenport, 4 McLean, 574; Catlett *v.* Pac. Ins. Co., 1 Paine, 594.

[14] Burnham *v.* Rangeley, 1 Wood. & M. 7.

The domicile of an infant is always presumed to be that of its mother.[1]

A person in Mexico becomes a citizen by buying land.[2]

State Citizen qualified for Senator.

That the qualification for a senator is that he be a citizen of the state.[3]

As distinguished from the qualification for governor, who must be a citizen of the United States.[4]

Expressio unius est exclusio, etc.

The Legislature cannot add qualifications to those prescribed by the Constitution.[5]

One may be a citizen of the United States without having all the privileges and immunities of citizenship.[6]

Constitutions are to be studied in the light of ordinary language, the circumstances attending their foundation, and the constructions placed upon them by the people whose bond they are.[7]

A constitution is not to be construed technically.[8]

And a construction which would necessarily occasion public or private mischief must yield to a construction which would occasion neither.[9]

Perhaps the safest rule of interpretation is to look to the nature and objects of the particular powers, duties, and rights, with all the lights and aids of contemporary history.[10]

"It is stable and permanent, — not to be worked on by the temper of the times nor to rise or fall with the tide of events, — and notwith-

[1] Sprague *v.* Litherberry, 4 McLean, 442.

[2] Commiss. under Corwin, bet. United States and Mexico, in 1868.

[3] Const. of California, art. 4, sect. 4.

[4] *Ib.* art. 5, sect. 3.

[5] Page *v.* Hardin, 8 B. Mon. 661; and see State *v.* Covington, 29 Ohio St. 102.

[6] Scott *v.* Sandford, 19 How 583, denying Amy *v.* Smith, 1 Litt. 326.

[7] Cronise *v.* Cronise, 54 Pa. St. 255; Paddleford *v.* Mayor, etc., 14 Ga. 438.

[8] Wilkinson *v.* Leland, 2 Pet. 661; People *v.* Dawell, 25 Mich. 247; Dorman *v.* State, 34 Ala. 216; Page *v.* State, 58 Pa. St. 338.

[9] *Ex parte* Griffin, Chase, Dec. 364; 25 Tex. Supp. 623.

[10] Prigg *v.* Commonwealth, 16 Pet. 539.

standing the competition of opposing events and the violence of contending parties, it remains firm and immovable as a mountain amid the strife of storms, or as a rock in the ocean amid the raging waves." [1]

All power proceeds from the people of the states.[2] The general government can claim no powers except such as are expressly granted, or are given by necessary implication.[3] It cannot impose on a state officer any duty whatever.[4]

The Fifteenth Amendment to the Federal Constitution does not confer the right of suffrage on any one.[5] The elective franchise is not a natural right or immunity.[6]

So a state has supreme and exclusive power to regulate the right of suffrage, or determine the class of inhabitants who may vote, with which Congress cannot interfere.[7] The state has exclusive power to regulate the conditions of tenure of office,[8] and to regulate proceedings in election contests,[9] and to determine the status, or domestic and social condition of its citizens.[10]

The constitutions of Alabama, art. 8, sect. 1; Arkansas, art. 3, sect. 1; Colorado, art. 7, sect. 1; Florida, art. 15, sect. 1; Georgia, art. 2, sect. 1; Indiana, art. 2, sect. 2; Kansas, art. 5, sect. 1; Michigan, art. 7, sect. 1; Minnesota, art. 7, sect. 1; Missouri, art. 8, sect. 2; Nebraska, art. 7, sect. 1; Oregon, art. 2, sect. 2; Texas, art. 6, sect. 2, and Wisconsin, art. 3, sect. 1, declare that foreigners who

[1] Van Horne's Lessee *v.* Dorrance, 2 Dall. 309, cited in Bourland *v.* Hildredth, 26 Cal. 161.

[2] Sturgess *v.* Crownenshield, 4 Wheat. 122; and see Desty's Fed. Const. p. 41.

[3] Martin *v.* Hunter, 1 Wheat. 304; s. c. 4 Munf. 1; Frasher *v.* State, 3 Tex. Ch. App. 273.

[4] Com. *v.* Dennison, 24 How. 66.

[5] Desty's Fed. Const. p. 287, notes.

[6] *Ib.* p. 282, note 21.

[7] Huber *v.* Reily, 53 Pa. St. 112; United States *v.* Anthony, 11 Blatchf. 200; Spencer *v.* Board of Registration, 1 McArth. 169; see Desty's Fed. Const. p. 281, note 20.

[8] Kennard *v.* Louisiana, 92 U. S. 480; Spencer *v.* Board of Registration, 1 McArthur, 169.

[9] Kennard *v.* Louisiana, 92 U. S. 480.

[10] Strader *v.* Graham, 10 How. 82; see Desty's Fed. Const. p. 236, note 4.

have declared their intention to become citizens of the United States are qualified voters.

In Connecticut "all persons who have been, or shall hereafter, previous to the ratification of this Constitution, be admitted freemen, according to the existing laws of this state, shall be electors."[1] And by sect. 2, as if some regard should be paid to United States citizenship, it states that citizens of the United States may be admitted as electors on certain conditions and qualifications not prescribed for its own citizens.[2]

In Delaware every white male citizen of the age of twenty-one or over is an elector.[3]

In Illinois, by the Constitution of 1848, every white male inhabitant and resident of the state at the time of its adoption is an elector.[4] And by the Constitution of 1870 this right is perpetuated.[5]

In New Hampshire every inhabitant of the state is an elector.[6]

In New York every male citizen is an elector.[7]

In West Virginia every male citizen of the state is an elector.[8]

And in Kentucky every free (white) male citizen is an elector.[9]

And the state of Kentucky alone, of all the states above mentioned, requires the candidate for state senator to be a citizen of the United States. In all the rest the qualifications of an elector is sufficient for a candidate to the Legislature in either branch.

Thus it appears that in a majority of the states, state citizenship is the highest qualification, which, associated with age and residence, is required for the right of elective franchise, or for the right to hold office, while full United States citizenship is wholly or partially ignored. Hence the decision that a state has exclusive power to regulate the conditions of the tenure of office.[10]

[1] Const. of Connecticut, art. 6, sect. 1. [2] *Ib.* sect. 2.
[3] Const. of Delaware, art. 4, sect. 1.
[4] Const. of Illinois, art. 6, sect. 1.
[5] *Ib.* art. 7, sect. 1.
[6] Const. of New Hampshire, Part. I, sect. 11.
[7] Const. of New York, art. 2, sect. 1.
[8] Const. of West Virginia, art. 4, sect. 1.
[9] Const. of Kentucky, art. 2, sect. 8.
[10] Kennard *v.* Louisiana, 92 U. S. 480; Spencer *v.* Board of Registration, 1 McArthur, 169.

B.

France.

[Translation.]

The provisions of the Code Napoléon,[1] March 8, 1803, are as follows: —

Chapter I. — On the Enjoyment of Civil Rights.

7. The exercise of civil rights is independent of the quality of a citizen, which is acquired and retained only in conformity to constitutional law.

8. Every Frenchman shall enjoy civil rights.

9. Every individual born in France of an alien may, within a year following the time when he shall have attained his majority, claim the quality of a Frenchman, provided that, in case he reside in France, he declares that it is his intention to fix his domicile there, and in case he reside in a foreign country he makes a declaration that he will take up his residence in France, and that he will establish himself there within a year, counting from the act of this declaration.

10. Every child of a French citizen, born in a foreign country, is French. Every child of French parents born abroad, whose father shall have lost his French citizenship, may recover this citizenship by fulfilling the formalities prescribed in art. 9.

11. An alien shall enjoy in France the same civil rights as those accorded to the French by the treaties of the nation to which this alien shall belong.

12. An alien woman who shall have married a Frenchman shall follow the condition of her husband.

13. An alien who shall have permission by authority of the king to establish his domicile in France shall enjoy all civil rights as long as he shall continue to reside therein.

14. An alien, even not residing in France, may be cited before French courts for the execution of obligations contracted by him in France with a Frenchman.

[1] Code Napoléon, "Code Civil" Liv. I. chap. 7.

15. A Frenchman may be arraigned before a court of France for obligations contracted by him in a foreign country, even with an alien.

16. In all affairs, other than those of commerce, the alien who shall be the plaintiff shall be obliged to give bail for the payment of the costs and damages resulting from the process, at least when he does not possess real estate in France of a sufficient value to insure this payment.

Chapter II. — On the Forfeiture of Civil Rights.

Section I. — *On the forfeiture of civil rights by the loss of French citizenship:* —

17. French citizenship shall be lost: First, by naturalization in a foreign country; second, by the acceptance, without the authorization of the king, of a public office conferred by a foreign government; third, and finally, by any establishment in a foreign country without intent to return. Commercial establishments can never be considered as having been made without intent to return.

18. A native of France who shall have lost his citizenship may always recover it on re-entering France with the authorization of the king, and on declaring that he wishes to remain there, and that he renounces all distinction contrary to French law.

19. A Frenchwoman, who shall marry an alien, shall follow the condition of her husband. If she become a widow she shall recover her quality of a French citizen, provided that she reside in France, or that she return there with the authorization of the king, and on declaring that she wishes to establish herself there.

20. Individuals who shall regain the quality of French citizens in the cases provided for by arts. 10, 18, and 19, shall not profit by it until they shall have fulfilled the conditions imposed on them by these articles, and only for the exercise of the rights opened for their benefit since this *époque*.

21. The French citizen who, without the authorization of the king, shall enter a foreign military service, or who shall affiliate himself with a foreign military corporation, shall lose his French citizenship. He can re-enter France only by the permission of the king, and recover French citizenship only by fulfilling the conditions im-

posed on a foreigner about to become a citizen, — all without prejudice to the punishment pronounced by criminal law against Frenchmen who have borne or shall bear arms against their country.

Naturalization of Frenchmen abroad.

An imperial decree of 1811 imposes severe penalties upon Frenchmen naturalized abroad, without permission from their own government.

It is a question whether this decree is still in force, but it appears to have been acted upon in 1834; and it is referred to in an official communication from the French government in 1859.

At all events, it has never been formally abrogated, and its existence in the French statute-book must be borne in mind when the liberality of the French law in recognizing expatriation is extolled.

The other disabilities mentioned in it having been abolished, the only penalty enacted by this decree which could now be enforced is that of the seventy-fifth article of the penal code: —[1]

"Every Frenchman who shall have borne arms against France shall be punished by death." — (Imperial decree of the 26th of August, 1811.)

Title I. *French citizens naturalized in a foreign country with our authorization.*

Article 1. No French citizen can be naturalized in a foreign country without our authorization.

Art. 2. Our authorization shall be accorded by letters patent drawn up by our chief justice, signed by our hand, countersigned by our secretary of state, indorsed by our cousin, the Prince Archichancelier, inserted in the bulletin of laws, and registered in the imperial court of the last domicile of those whom they concern.

Art. 3. Frenchmen so naturalized in foreign countries shall enjoy the right of possessing, of transmitting property, and of succession thereto, even when the subject of the country where they shall be naturalized shall not enjoy these rights in France.

Art. 4. Children of a Frenchman naturalized in a foreign country, and who are born in that country, are aliens. They recover the qual-

[1] Les Cinq Codes "Code Pénal," Liv. III. art. 75.

ity of French citizens by fulfilling the formalities prescribed by arts. 9 and 10 of the Code Napoléon. Nevertheless they shall collect inheritances, and exercise all rights which shall be open to their profit during their minority, and in the ten years which shall succeed the time when they shall attain their majority.

ART 5. Frenchmen naturalized in a foreign country, even with our authorization, shall never bear arms against France under penalty of being arraigned before our courts, and condemned to the punishment provided in the Penal Code, Book 3, art. 75 and following.

TITLE II. *French citizens naturalized in a foreign country without our authorization.*

ARTICLE 6. Any Frenchman naturalized in a foreign country without our authorization shall suffer the loss of his property, which shall be confiscated. He shall no longer have the right to inherit property, and any legacies which may be left to him shall pass into the hands of the person whose claim is next to his, provided that such person be a French citizen.

ART. 7. It shall be proved before the court of the last domicile of the defendant, on the initiative of our "*procureur-général*," or on the request of the civil party interested, that the individual, having been naturalized in a foreign country without our authority, has lost his civil rights in France; and consequently the succession opened to his profit shall be adjudged to whomsoever has the right thereto.

ART. 8. Individuals whose naturalization in a foreign country without our authorization shall have been proved, as provided in the preceding article, and who shall have received, directly or by transmission, titles instituted by the "*senatus consultum*" of the 14th of August, 1806, shall forfeit them.

ART. 9. These titles and the property thereto attached, shall devolve upon the next in law, excepting the rights of the wife, which shall be regulated as in case of widowhood.

ART. 10. If the individuals mentioned in art. 8 shall have received any of our orders, they shall be stricken off from the registers and rolls, and shall be forbidden to wear the decoration.

ART. 11. Those who were naturalized in a foreign country, and against whom proceedings shall have taken place as provided in arts.

6 and 7 preceding, if found within the territories of the empire, shall on the first offence be arrested and conducted across the frontier; on a repetition of the offence, they shall be indicted before our courts and condemned to imprisonment for a period of not less than one year, nor more than ten years.

ART. 12. And no commutation or release from the punishment above mentioned can take place but by letters of relief granted by us in *conseil privé* as letters of pardon.

ART. 13. Every individual naturalized in a foreign country without our authorization, who shall bear arms against France, shall be punished in conformity with art. 75 of the Penal Code.

The ninth article of the Code Napoléon was modified by a law of 1851: —

"January 28, 29, and February 7, 1851. (10th series, No. 2730, (art. 9, C. N.) Law concerning individuals born in France of foreigners who themselves were born there, and the children of naturalized foreigners:

"ARTICLE 1. Every individual born in France of an alien, who himself was born there, is himself a French citizen, provided that within a year after attaining his majority, as fixed by French law, he does not claim the quality of a foreigner by a declaration made either before the municipal authority of the place of his residence, or before the diplomatic agents or consuls accredited to France by the foreign government.

"2. Art. 9 of the Civil Code is applicable to the children of a naturalized foreigner, although born in a foreign country, if they were minors at the time of the naturalization. As regards the children born in France or abroad, who were of age at this same period, art. 9 of the Civil Code is applicable in the year following that of the said naturalization."

By the law on the army of 1831 (21st March, 1832), "No one shall be allowed to serve in the French army who is not a French citizen."

This provision has led to much correspondence between France and other powers, more especially the United States, respecting the right to exemption from the conscription, on their return to France, of Frenchmen naturalized abroad.

In 1859 M. Walewski furnished the American *chargé d'affaires* with an authoritative declaration of the views of the French government on this point[1]: —

PARIS, Nov. 25, 1859.

"SIR: — I have the honor to communicate to you the reply of the government of the Emperor to the questions which the deceased Mr. Mason had put to him in his letter of the 27th of July last, relative to Frenchmen, emigrants to the United States, who have there obtained letters of naturalization.

"After having set forth the principles of the American law in the matter of naturalization, Mr. Mason reduced his inquiry to a formula, as follows: —

"'*First question.* Does the French legislation recognize in individuals, French by birth, the right to cause themselves to be naturalized as subjects or citizens of a foreign country, without preliminary authorization from the government?'

"French legislation does not confer on a Frenchman the right to renounce his nationality, but he loses it by positive law (art. 7, Code Napoléon) through naturalization in a foreign country.

"That naturalization, by the terms of the decree of Aug. 26, 1811, may have grave consequences, provided for by that decree when it has not been authorized by the government.

"Even in cases in which such authorization has been accorded, it effectively disperses the prejudicial results of an unauthorized naturalization, but expressly maintains the loss of nationality.

"'*Second question.* Are Frenchmen by birth, but naturalized citizens of the United States, who return to France without having the intention to recover nationality nor to establish themselves permanently, subject to the law of conscription?'

"The law of conscription imposes on every Frenchman the obligation of military service. It attaches to the fulfilment of this obligation a penal sanction.

"Therefore, the Frenchman who, before he has lost that quality, shall have emigrated, thus placing himself out of the way of the obligation of military service, would assuredly be punishable on his return to France, even although he should have obtained a foreign naturali-

[1] Senate Ex. Doc. 1859–1860, Vol. XI. p. 214.

zation, and he may be prosecuted, whether as refractory (art. 230, du nouveau Code Militaire, loi du Juin, 1859) or as a deserter. (Arts. 235, 236, 237, of same date.)

"This, moreover, is recognized by the Government of the United States, as it is a sequence from the letter of Mr. Mason, that it refuses its protection to the Frenchman become a stranger, in the two cases following: —

"1. If the obligation of military service be anterior to the epoch of emigration:

"2. If, before his emigration, the Frenchman had not satisfied the law of conscription. The question becomes more difficult when it treats of a man born abroad of French parents, and who, consequently, by the provisions of art. 10 of Code Napoléon, is himself a Frenchman, and bound to military service, in conformity with art. 6 of the law of March 21, 1832.

"But if, in France, the quality of citizen is now actually acquired by parentage, yet, for a long time, nativity alone conferred it, and it may still be so in the United States. In such a case it would be hard to subject to French law an individual who should have fulfilled similar obligations toward the country in which he was born.

"'*Third question.* Does the French law of conscription render the Frenchman born and resident in a foreign country subject to military service in the same degree as if he had not left the country of his birth, or as if he had not caused himself to be naturalized as a foreigner?'

"This question is disposed of by the solution which the Federal Government itself admits to the second.

"If, in effect, the Frenchman, before emigrating and causing himself to be naturalized in a foreign country, has not satisfied the obligation of military service, evidently he may be prosecuted in France, in case of his return, even though the return should be only accidental. Besides, he might, during his absence, have been sentenced for contumacy, and his presence in France would impose, as well on the public authority as himself, the duty of clearing off this contumacy.

"Such are the solutions which the three questions that the legation of the United States has presented to me can receive. It is difficult, however, to treat them theoretically, without knowledge of

the circumstances which may have given birth to them, which often are of a nature to draw out modifications of the application of strict law.

"I will add that all the points treated in the present dispatch present veritable questions of state, upon which the government of the Emperor can only express opinions, but the solutions belong exclusively to the courts.

"Receive, et., WALEWSKI.

"Mr. Calhoun,
Chargé d' Affaires of the United States at Paris."

It will be seen from M. Walewski's note that he considered that a Frenchman naturalized abroad was liable to the law of conscription on his return to France; but a case occurred in 1860 in which it was decided by a civil tribunal that naturalization in a foreign country exempted a Frenchman from the conscription.

The case, that of Mr. Zeiter, is frequently referred to in the correspondence, and is of importance as establishing a principle of French law.

It has never been published, but a copy has now been procured from Wissembourg, where the judgment was delivered, and is printed in the Addenda.

These conscription cases are ordinarily dealt with by the local military tribunals (*conseils de guerre*), and there does not seem to have been any other instance of a recent decision on the subject by a civil court, nor does this provincial judgment appear to have been revised by a superior court.

Lord Lyons has been good enough to procure a report from M. Treitt, the counsel to the Paris embassy, upon the general question of the status in France of Frenchmen naturalized abroad, with reference especially to their liability to the conscription.

As this report gives full explanation of the French law and of the practice of the French government, it is here inserted at length: —

"Paris, January 26, 1868.

"His Excellency Lord Lyons,
Embassador of Her Britannic Majesty at Paris:

"My Lord: Your Excellency has requested of me a copy of a judgment rendered by the French court at Wissembourg, in favor of

Michael Zeiter, a French citizen by birth. The judgment is quoted by Laurence, in his notes on Wheaton (edition of 1863), as having discharged Michael Zeiter from all the obligations which a Frenchman owes to his country, among others the obligation to perform military service. The reason alleged for this decision is that Zeiter had been naturalized as a citizen of the United States.

"It is added that this judgment seems to be one of the rare decisions (if not the only one) in which a court has acknowledged that the naturalization of a person in a foreign country is sufficient to annul the sovereign rights of the mother country, and the obligations which he has there contracted by his birth.

"In view of the remarks which I had the honor to address to your Excellency, you have referred me to a note which Count Walewski, Minister of Foreign Affairs of France, addressed to Mr. Calhoun, the American minister, under date of Nov. 25, 1859, which note was published in 1860 among the documents communicated to the Congress of the United States. In that note M. Walewski does not admit that a French citizen can, by the mere fact of his naturalization abroad, be exempted from the obligations imposed upon him by the laws of his country, and escape, among other requirements, the military service. In this latter case, says the minister, such refractory Frenchman incurs the penalties provided by the Military Code (art. 230) for failure to perform military duty. M. Walewski, moreover, calls attention to the imperial decree of Aug. 26, 1811, which provides severe penalties for Frenchmen who have become naturalized as foreigners without the authorization of their government.

"Finally, your Excellency has been pleased to point me to the case of one Alibert, belonging to the class of 1839, who failed to perform military duty, and who was, on the 10th of October, 1852, sentenced to be imprisoned for one month therefor, by a court-martial at Marseilles. He appealed, however, from the sentence to the court of revision at Toulon, and there, with the assistance of the American consul, he pleaded his naturalization in the United States, and was acquitted.

"In sum, your Excellency has addressed to me the following question:

"What is the law governing a Frenchman who has been naturalized as a foreigner after his return to France?

"The question is simple, but the reply will necessarily be complex.

"I give, in the first place, a copy of a sentence of the court at Wissembourg, dated June 2, 1860.

"As is seen, this sentence only shows that Zeiter has lost his French citizenship. The legal consequence of this showing is that he can no longer serve in the French army. It was no part of the duty of the court, however, to concern itself with the penalties and civil incapacities which Zeiter might have incurred, as we shall subsequently see. This decision is based upon law, as are several others rendered by different courts in similar cases, especially since the war between the North and South, on account of which many Frenchmen, naturalized as American citizens, returned to France.

"The naturalization of a Frenchman abroad, whatever may be his new country, involves the loss of his French citizenship, and this involves *ipso facto* incapacity for the military service. This is the case of Alibert; he doubtless proved his American citizenship, and was exempted from the penalty attached to the offence of wilfully avoiding military duty, said penalty being imprisonment for from one month to one year, according to art. 38 of the army law of 1832.

"The above two cases are not reported in any work on jurisprudence; they are not, however, the only ones; there are half a score of them in the bureau of military justice at the ministry of war.

"The military authorities in France observe with regret the disposition which has been manifested during the past three years, by the young men of the country, to avoid the performance of military duty.

"The ministry of war now proceeds in such cases as follows:

"When the case of a person who has sought to avoid the due performance of military duty is brought before it, it has the party charged with the offence taken before a court-martial, for such a person is a soldier who has not rejoined his regiment.

"If the person seeking to avoid the performance of military duty pleads naturalization in a foreign country, the court-martial defers the enforcement of the penalty and grants the accused a delay, that he may be enabled to prove his foreign citizenship in the courts.

"If he obtains a judgment declaring that he has lost his French

citizenship, the court-martial acquits him, but only when his naturalization took place three years before. If this is not the case, the judges enforce the penalty provided for the offence. In fact, the avoidance of military service is an offence which no mere lapse of time can cancel; it lasts until the military service is rendered. Now, the jurisprudence of courts-martial says that the offence no longer exists when the offender has become naturalized in a foreign country; thenceforward the offender who has been naturalized more than three years incurs no penalty. If, on the other hand, the naturalization did not take place more than three years previously, the ex-Frenchman is treated as a person wilfully avoiding military service, and is punished, even though he be a citizen of some other country, no matter which.

"Thus, in order to escape such a penalty, the ex-Frenchman must pass at least three years abroad. If he returns before the expiration of such time, he incurs the risk of suffering punishment for from one month to one year, by sentence of court-martial, for he is still avoiding the performance of military duty.

"We must not forget to say that when, in this case, the person seeking to avoid military service has suffered his punishment he is free, and his foreign citizenship prevents him from being compelled to serve in the French army.

"Such are the rules observed by the bureau of military justice at the ministry of war.

"Things are managed in about the same way for the national guard. Then there are boards of verification.

"It is the duty of these boards to decide concerning the grounds of exemption claimed by persons who refuse to do military duty.

"Now, it often happens (this I say of my own knowledge) that natives of France, when called to serve in the national guard, present American or other naturalization papers. In presence of such documents these persons have been declared exempt from the service by reason of their foreign citizenship. Moreover, an opinion of the council of state of Nov. 18, 1842, has sanctioned this system of jurisprudence.

"From all the foregoing observations, what are we to conclude? It is that a Frenchman may, by getting naturalized abroad, escape

the obligations which are imposed upon him by the country of his birth.

"This consequence is derived from the common law and from the exceptional law.

"Art. 17 of the Civil Code expressly says that French citizenship is lost by naturalization acquired in a foreign country. It appears from the debates of the legislature of 1803 that the word 'acquired' was applied to an act of express will, performed according to the legal forms of the new country, and having for its object the renunciation, *proprio motu*, of French citizenship.[1]

"The Civil Code, then, permits Frenchmen to acquire a foreign nationality. It is, in fact, a principle inherent in human liberty, a principle of natural right, that a person may leave the soil on which his birth may by chance have thrown him. This principle is admitted by all publicists from Cicero[2] down to those of our time. The French laws contain frequent enunciations of it. Naturalization in Prussia, however, is subject, it is said, to the previous authorization of the government.[3]

"In France, however, according to the Civil Code, which is the common law, the right of being naturalized abroad is absolute.

"On the 26th of August, 1811, the Emperor Napoleon I. promulgated a decree relative to the naturalization of Frenchmen abroad.

"Art. 1 of this decree is as follows: —

"'No Frenchman can be naturalized in a foreign country without our authorization.

"'The following articles mention the civil rights which Frenchmen naturalized in a foreign country shall continue to enjoy in France.'

"Art. 6 is as follows: —

"'Art. 6. Any Frenchman naturalized in a foreign country, without our authorization, shall suffer the loss of his property, which shall be confiscated; he shall no longer have the right to inherit property,

[1] Locré, *Esprit du Code Civil*, Vol. I. p. 333.

[2] Ciceron, Oratio pro Cornelio Balbo, chap. 13; Grotius, Lib. II. and V. sect. 24; Puffendorf, Lib. VIII. chap. 11, *s. c.* 2; Merlin, Répertoire Général, Verbo Souveraineté, sect. 4; Wolf, 76th part, p. 187; French Constitution of Frimaire, year VIII., in its 4th article; Toullier, Code Civil, Vol. I., No. 266, etc.

[3] Prussian Code, art. 2, Book XVII. sect. 127.

and any legacies which may be left to him shall pass into the hands of the person whose claim is next to his; provided that such person be a French citizen.'

"Finally, art. 11 gives the government the power to expel from France any Frenchman naturalized in a foreign country without authorization; and, in case of his return to the territory of the empire a second time, he may be sentenced to be imprisoned for a term of not less than one year nor more than ten years.

"Napoleon I., it is said, was induced to promulgate this decree by seeing Frenchmen who were ill-disposed toward the empire among hostile nations and in foreign armies. Thus is explained the severity of this decree, which has been the object of the most bitter attacks. In the first place, it has been said that it was unconstitutional, because it was prepared and promulgated without the concurrence of the Corps Législatif, contrary to the *constitutions impériales*. Moreover, since the fall of the first empire, some writers have maintained that this decree has become obsolete. There are even decisions of the government of the Restoration which have annulled judgments rendered in virtue of this decree.[1]

"A greater number of authors, however, have contended that this decree still had the force of a law, for the reason that it had never been attacked and annulled by the Corps Législatif. Moreover, numerous decisions have declared that the imperial decrees promulgated and executed as laws in the time of the empire have remained in force in all their provisions which have not been abrogated by subsequent laws. In fact, the decree of 1811 has been enforced in cases of legacies left by Frenchmen who had been naturalized abroad without authorization.[2]

"This decree, however, is none the less a violation of the natural law, as it provides severe penalties for naturalization abroad, while all publicists proclaim the right which every man has to change his country.

"This decree is, at the present day, paralyzed in its application; in

[1] Decisions of the Council of State of June 19, inserted in the *Bulletin des Lois*.

[2] See, among others, a decision of the court of Pau, of March 19, 1834. Collection of Decisions of Dalloz, year 1835, second part, p. 38.

fact, the confiscation of property was abolished by the charter of 1814. Then came the law of July 14, 1819, which gives all foreigners the same rights as Frenchmen, as regards property and inheritance, without distinction between foreigners by birth and foreigners by naturalization. A solemn decision of the court of Paris has decided that this decree is not applicable to the right of inheriting property.[1]

"The annals of jurisprudence have not, for more than twenty years, furnished a single case in which either the government or parties interested have caused the enforcement of the decree of 1811. I think that, if the case should be presented, the courts would hesitate a long time before enforcing the rigorous provisions of this exceptional legislation.

"But how many uncertainties are there in this matter, so important, since it affects the personal status of the parties.

"Let us observe, however, that the decree of April 26, 1811 (whether it is still in force or has become obsolete), does not annul naturalizations acquired abroad without authorization; it inflicts penalties therefor, but allows them to exist. The Frenchman has therefore a new country, to which he has been obliged to take the oath of allegiance. No one can have two countries.[2] The general interest requires that no one should have two countries.[3]

"The country of adoption supplants the mother country. In my opinion the ex-Frenchman is released from his obligations toward the latter. The English government, in giving letters of naturalization to foreigners, notifies them, at the same time, that it does not intend to release them from their obligations toward their mother country.

"This is an act of prudence. But the French law is silent upon the rights which it retains over individuals who obtain naturalization abroad without authority. She places them on a similar footing to strangers so far as relates to civil rights. Thus the French law itself breaks the ties which unite an ex-Frenchman to his mother country. Aside from the confiscation of property and the loss of right of succession, — penalties of 1811, to-day inapplicable and unapplied, — the

[1] Decision of Feb. 1, 1836. Dalloz's Collection of Decisions, 1836, second part, p. 71.

[2] Statement of Reasons for the First Title of the Civil Code, 1803.

[3] General Repertory of Merlin, Verbo Loi, sect. 6.

law imposes on the ex-Frenchman the sole obligation never to bear arms against France on pain of death.[1]

"The Frenchman who gives up his nationality knows the rights of which he will be deprived in France. The courts can refuse to give him their judgments in his disputes with foreigners. If he is plaintiff or defendant, he can be subjected to the category of *judicatum solvi*. He no longer enjoys any political or municipal rights. He is disqualified for public offices and the practice of certain professions; in short, to curtail the list, he can be expelled from French territory, like all other strangers, by a simple act of the police.[2]

"The Frenchman must have calculated inconveniences and the advantages of foreign naturalization. He is released from the burdens imposed by the mother country.

"This state of things is to be regretted. For instance, to become naturalized a Swiss, one year's residence, and the payment of a few francs are sufficient. It is a great facility given to young Frenchmen who wish to escape the military law. This point merits the attention of French legislators, but at this moment the law must be taken as it is, and it must be conceded that naturalization abroad releases a Frenchman from his obligations toward France. The decisions of the courts only confirm the expatriation; the consequences of expatriation emanate from the laws themselves; one of these consequences is the exemption from military service.

"I believe that I have answered, in every particular, the question which your Excellency has put to me. I have freed it from all collateral questions which the loss of French nationality suggests, but which would have rendered the subject obscure. In sum, I am led to the conclusion that France does not impose any other obligation on the ex-Frenchman than not to bear arms against her.

"I take leave to add that this conclusion shocks my inward feelings. I regret to see a simple naturalization abroad cancel all the obligations which are due to the mother country. But questions of law are not solved by the feelings alone; it is a matter of law as it is and not as it ought to be. Accept, etc., TREITT.

"*Advocate of the Imperial Court, Counsel to the English Embassy.*"

[1] Art. 75 of the Penal Code; and art. 11 of the Decree of Aug. 26, 1811; arts. 21 and 22 of the Civil Code.

[2] Art. 13, Loi du 3 Decembre, 1849, sur les étrangers.

NATURALIZATION OF ALIENS IN FRANCE.

Under the old law of France, the Dutch, and Swiss, and other nations had, by virtue of treaties, the rights of natives (*indigenatûs*), and by the Bourbon Family Compact of 1761 a similar privilege was conceded to Spanish subjects.

The law of May 2, 1790, provided, —

"All those who, born out of the kingdom, of foreign parents, are established in France, shall be regarded as French and admitted, upon taking the civic oath, to the exercise of the rights of active citizens after five years' continuous domicile in the kingdom, if they have besides acquired real estate or married a Frenchwoman, or established a commercial house, or received in any city, letters of citizenship."

The constitution of the 3d of September, 1791, "allows the legislative power to issue to a foreigner, for important considerations, an act of naturalization, on condition only of his residence and oath."

Thus was established the system of "*grande et petite naturalisation*," which, with various modifications, has continued in force up to the accession of the present emperor.

The constitution of 1793 did away with the oath and declared French citizens all aliens, aged twenty-one, who had been domiciled in France for one year, and who lived by labor.

The constitution of 1795 abrogated that of 1793, and made it a condition of naturalization that an alien should have previously declared his intention to domicile himself in France.

By the terms of the third article of the constitution of 1801, "a foreigner becomes a French citizen when, after having attained the age of twenty-one years and declared the intention of settling in France, he has resided there ten consecutive years."

By a decree of the senate of 1804, confirmed by a decree of the 17th of February, 1808, the government was authorized to confer the quality of French citizen, after one year's residence, on any alien who had rendered important services to France, thus reviving the "*grande naturalisation*" of 1790, but without requiring an oath.

By an ordinance of the 4th of June, 1814, art. 1, "in conformity to the ancient French constitutions, no foreigner can, from this day set forth, sit, neither in the chamber of peers nor in that of the

deputies, unless by important services rendered to the state he has obtained from us (the king) naturalization papers approved by the two chambers."

The privilege of "*grande naturalisation*" has been conferred on Benjamin Constant and other distinguished foreigners.

These laws were consolidated by the law of the 3d of December, 1849 : —

"ARTICLE 1. The president of the republic shall decide upon applications for naturalization.[1]

"Naturalization cannot be granted until after inquiry made by the government respecting the morality of the foreigner, and upon the favorable opinion of the council of state.

"The foreigner shall be obliged, besides, to fulfil the following conditions : —

"1. To have, after the age of twenty-one years, obtained authority to establish his domicile in France in conformity to art. 13 of the Civil Code.

"2. To have resided ten years in France since this authorization.

"A naturalized foreigner shall enjoy the right of eligibility for the National Assembly only by virtue of a law.

"Notwithstanding, the delay of ten years can be reduced to one year in favor of foreigners who shall have rendered important services to France, or who shall have introduced into France an industrial enterprise, or useful inventions, or distinguished talents, or who shall have founded great institutions.

"3. So long as the naturalization shall not have been issued, the authority granted to a foreigner to establish his domicile in France can always be revoked by decision of the government, which must take the advice of the council of state.

"4. The provisions of the law of the 14th of October, 1814, respecting the inhabitants of the departments annexed to France, cannot be applied in the future.

"5. The preceding provisions do not affect, in any respect, the rights of eligibility to the National Assembly acquired by naturalized foreigners before the promulgation of the present law.

"6. The foreigner who shall have made, before the promulgation

[1] Bulletin des Lois, Vol. CIXVII. p. 545.

of the present law, the declaration prescribed by the third article of the constitution of the year VIII, can, after a residence of ten years, obtain naturalization according to the form indicated in art. 1.

"7. The minister of the interior can, through police, order all foreigners travelling or residing in France to immediately leave French territory, and cause them to be conducted to the frontier.

"He shall have the same right regarding the foreigner who shall have obtained authority to establish his domicile in France; but after the lapse of two months the measure shall cease to be in force if the authority shall not have been revoked as indicated in art. 3.

"In the departments on the frontier the prefect shall have the same right in regard to a non-resident foreigner, subject to immediate reference to the minister of the interior.

"Every stranger who shall have evaded the execution of the measures specified in the preceding article, or in art. 272 of the Penal Code, or who, after having left France in consequence of those measures, shall have returned without the permission of the government, shall be brought before the courts and condemned to an imprisonment of from one to six months.

"After the expiration of his term of punishment he shall be led to the frontier.

"The penalties prescribed by the present law can be reduced in conformity to the provisions of art. 463 of the Penal Code."

On the 29th of June, 1867, a law was passed reducing the term of residence required from ten to three years.

"Art. 1. The articles 1 and 2 of the law of 3d December, 1849, are supplanted by the following provisions: —

"Art. 1. A foreigner who, after the age of twenty-one years, has, in conformity to art. 13 of the Code Napoléon, obtained authority to establish his domicile in France, and has resided there three years, can be admitted to enjoy all the rights of a French citizen.

"The three years shall count from the day when the application for authority shall have been registered at the ministry of justice.

"The domicile in a foreign country to fill an office conferred by the French government is equivalent to residence in France.

"It is granted upon an application for naturalization, after inquiry into the moral character of the foreigner, by a decree of the emperor,

issued upon the report of the minister of justice, subject to the council of state.

"ART. 2. The delay of three years fixed by the preceding article, can be reduced to a single year in favor of foreigners who shall have rendered important services to France, who shall have introduced into France an industrial enterprise or useful inventions, or who shall have brought to it distinguished talents, or founded great institutions, or instituted great agricultural improvements.

"ART. 2. The fifth article of the law of Dec. 3, 1849, is repealed."

It will be seen, therefore, that there are two forms of naturalization in France.

"La grande naturalisation,"[1] which confers the privilege of sitting in the chambers, and which corresponds, in some measure, to the former English form of special naturalization by act of parliament, repealing the disabilities of previous acts in favor of a particular person, as was done in the case of Prince Albert, and to the present naturalization by act of parliament, as in the Bischoffsheim case.

"La petite naturalisation" corresponds with our naturalization by certificate from the secretary of state, and is granted by *lettres de déclaration de naturalité* to aliens who have complied with the conditions of the law. The alien is supposed to have resided in France with the permission of the government, from the fact of his name and domicile having been registered with the ministry of the interior, as required by the police regulations from all residents.

Debate in Corps Législatif on the Army Bill, December, 1867.

In the recent discussion on the law for the reorganization of the army, M. des Rotours proposed the following amendment to the first clause of the bill: —

"Persons born in France of foreign parents, and having had their

[1] M. Demangeat, in his note to M. Foelix's Droit International Privé, doubts whether "la grande naturalisation" still exists, as by the decree of Feb. 2, 1852, all electors are eligible to seats in the Corps Législatif, and the senate is composed of such citizens as the emperor may please to select; and he cites Prince Poniatowski as an instance of a citizen naturalized by imperial decree and promoted to the senate without any special law.

residence there, will be subjected to the recruiting law in the year following that of their majority.

"Those among them who wish to preserve their character of foreigners will make declaration thereof, and shall be admitted into the foreign legion."

Marechal Niel, the minister of war, spoke in favor of the principle of this amendment, and stated that the conscription ought at all events to be extended to the sons born in France of aliens themselves born in France, and who, by the law of 1851, were declared to be Frenchmen, unless they selected the nationality of their fathers on attaining their majority.

Objection was, however, taken to making such an alteration in the laws affecting the nationality of aliens by means of a clause introduced into an army bill; and, on M. Baroche, minister of justice, undertaking that the matter should receive the careful attention of the government, M. des Rotours withdrew his amendment.

Number of English subjects who, from 1851 *to* 1861, *obtained authority to establish their domicile in France, and of those who, during the same period, were naturalized as Frenchmen*: —

Années.	Admission à domicile.	Naturalisations.
1851	8	—
1852	6	—
1853	6	1
1854	6	—
1855	5	1
1856	3	—
1857	9	—
1858	24	—
1859	13	—
1860	9	2
1861, Janvier à Avril	3	—
	92	4

For further information respecting French naturalization, see Foelix, "Droit International Privé," already cited, and "Revue de Droit Français et Etrangers," par MM. Foelix, Duvergier, etc., Vol. XII. p. 321; Article, "De la Naturalisation Collective et de la Perte Collective de la Qualité de Français," par M. Foelix, and Vol. X. p. 446; "Des Effects de la Naturalisation," par M. Foelix; and "Dictionnaire de Droit," par M. Dalloz, "Naturalisation."

[Translation.]

COMMUNICATION FROM M. TREITT, LEGAL ADVISER AT PARIS TO THE BRITISH EMBASSY IN THAT CAPITAL.

The questions propounded by the foreign office are the following:—

"What constitute the disabilities to which resident aliens in France are subject according to the law of that country?"

There is a distinction to be made: (1) Between simple residents in France; and (2) Between aliens admitted by the authority of government to establish their domicile in France.

The law considers as aliens those persons who are born of foreign parents, whether in a foreign country or in France, who have not been naturalized.

The condition of aliens has varied according to the different legislations which have existed in France.

§ 1. Aliens simply residing in France, and having neither requested nor received authorization to establish their domicile in France.

Their capacities. — All aliens without the least restrictions have in France the right to succeed, to dispose of, and to acquire property; there is but one distinction between movables and immovables; the equality between national and foreign is absolute, whether the aliens be within or out of France. This state of things exists since the law of the 14th of July, 1819, which abrogated the articles of 726 and 912 of the Code Napoléon, and abolishes the rights aimed at strangers, such as the rights of aliens, etc.

Nevertheless this law contains one single restriction, which is equitable: IN THE CASE of a division of a succession between alien and French co-heirs, the interests of the French claimants will prevail; they can mortgage, alienate, and dispose of, under all contracts permitted by the law.

They have the right of prescription.

Commerce and industry are absolutely free to aliens; they exercise industrial rights equally with denizens, and can obtain every

concession, even that of mining interests. Industrial, artistic, and literary property have all been subjects of national treaties. In the limits of the corporations where aliens reside, they participate in certain community possessions, such as the use of pasturages, the wood of the forests, etc., belonging to the corporations.

In a word, it may be said that in all that concerns the absolute status, and the right of property, the condition of aliens is identical with that of the French themselves.

As to personal status they enjoy all the family rights of father, son, and spouse. They have the right of hunting, fishing, and carrying arms.

They have the liberty of worship and individual liberty, and they may publish their opinions as freely as the French themselves.

Accredited authors maintain that they can establish a legal family by adopting children according to the laws of France; that they may be tutors, and enjoy all the rights by which the law for protection's sake surrounds the family.

Their inabilities consist in this: All aliens are excluded from performing political or governmental functions. They cannot be witnesses in certain authentic acts because the law says: "Witnesses must be Frenchmen, of age, of masculine sex, etc." They cannot be arbiters in suits at law, because arbiters in fact are temporary judges.

Aliens must have special authorization to exercise pharmacy, surgery, or medicine. Aliens are interdicted from public employments, such as priests or ministers of different denominations, postmasters, and other positions exacting an oath to be given to the chief of the state; that is why aliens can neither be lawyers, notaries, guardians, etc., etc. They constitute no portion of the national guard of the army, nor do they serve on juries. If aliens are pleading in a court of justice the defendant can demand the caution *judicatum solvi*, unless there is a question of commercial matters in which this surety does not exist. Before the recent abolition of writ of arrest, strangers' arrests might be.

In case of failures, aliens enjoy the same privileges as Frenchmen, except that they are not permitted to make a surrender of their property to their creditors, thereby releasing *themselves* from their just debts.

Eminent jurists think that even a state of war does not deprive

the alien of his right of action against a Frenchman, before the tribunals of France, for obligations contracted with the alien.

In *civil* matters the French tribunal can refuse its jurisdiction to two aliens, but in *commercial* transactions two aliens have a right to invoke French justice in every case.

In fine, the law of 3d of December, 1849 (art. 7), authorizes the Government to expel from the territory of the empire all aliens whether travelling through or residing there. This right of the Government is arbitrary and absolute.

§ 2. Aliens domiciliated, or admitted to exercise civil rights by governmental authority.

An alien, unless having obtained extraordinary letters of naturalization, only accorded on occasions of exceptionally great services rendered, can only be naturalized in France after a residence of ten years, dating from the day the Government accorded him domiciliatory rights. The admission to domicile removes certain disabilities attached to one who is merely a resident.

The admission to domicile does not abrogate the status of alien, but it confers on children born in France of foreign parents the right, on reaching their majority, to assert their status of Frenchmen without further formality than to submit to the dispensation of French laws, such as recruiting service, etc., etc., according to the ninth article of the Code Napoléon. Aliens admitted to domicile enjoy all civil rights: such are the formal terms in the thirteenth article of the Code Napoléon; it results that even before the law of the 14th July, 1819, reported above, the alien who is domiciliated is in a position to receive, to dispose of property, etc.; as a Frenchman, he can take out proceedings in justice without being subject to the surety *judicatum solvi*.

He is admitted to the privilege of transferring his property to his creditors, thereby liberating himself from all his debts. Before the abolition of writ of arrest, the domiciled alien was subject only in the same cases as Frenchmen, and he could exercise the writ of arrest against aliens.

To be brief, the domiciliated alien, except in political rights, enjoys the same civil rights as a denizen; nevertheless, as he is always an alien, he cannot be a witness in certain authenticated acts, or be arbiter, since arbitrage is a jurisdiction.

The domicile acquired in France does not absolve the alien from the obligations which personal status in his own country imposes on him, or of his obligations to his native country. An alien may be deprived of the right of domicil by the Government on a notification of the council of state. But notwithstanding the admission to domicile, the right of expulsion embodied in the law of 3d December, 1849, remains entirely in the hands of the Government.

Certain countries have made particular treaties with France, securing to themselves the enjoyment of civil rights. Thus a treaty with Sardinia of the 24th of March, 1760, dispenses Sardinian subjects of the surety *judicatum solvi*.

There are other treaties which reserve to foreign countries negotiations with the most favored nation.

But similar treaties are almost superfluous, considering the small number of disabilities to which aliens are subject in France, and which appertain almost entirely to political functions, which involve the taking of an oath to the sovereign. From what has been said, it may be fairly concluded as a consequence of the progress of legislation and of jurisprudence, that there exists but little difference between aliens who have a resident domicile, and native Frenchmen, that aliens are no longer subject to the surety *judicatum solvi*, and that their children born in France have greater facilities to acquire the privileges conferred on Frenchmen.

To sum up: the privileges of an alien are regulated by the laws of his own country; his personal status follows him always.

But in France this alien enjoys as a denizen the advantages of all contracts real or personal recognized by the French law.

From any point of view, the condition or status of an alien, whether resident or domiciliated, differs very little at this time from the condition of the Frenchman.

Jurisprudence tends continually to ameliorate the condition of aliens; they are only refused rights which are expressly denied by laws not yet modified; and they enjoy absolutely all the rights and privileges by which they are invested by the Law of Nations.

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University Press: John Wilson & Son, Cambridge.